.hk Domain Name Dispute Resolution
ARBITRATION PANEL DECISION

Complainant: DPD Dynamic Parcel Distribution GmbH & Co. KG
Respondent: FAXIAN LI
Case Number: DHK-1600132
Contested Domain Name: <dpd.hk>
Panel Member: Mr Tan Loke-Khoon

1. Parties and Contested Domain Name

The Complainant is DPD Dynamic Parcel Distribution GmbH & Co. KG of Wailandtstrasse 1, D-63741 Aschaffenburg, Germany.

The Respondent is FAXIAN LI and the email address is ice8v8@163.com.

The domain name at issue is <dpd.hk> (the "Disputed Domain Name"), registered by the Respondent with Shanghai Meicheng Technology Information Development Co. Ltd (the "Registrar"), with the email address domain@cndns.com.

2. Procedural History

On July 26 2016, the Complainant submitted the Complaint in English on domain name <dpd.hk> to the Hong Kong International Arbitration Centre (the "Centre"), in accordance with the Domain Name Dispute Resolution Policy for .hk and .香港 (the "Policy"), the Domain Name Dispute Resolution for .hk and .香港 domain names Rules of Procedures (the "Rules"), and the HKIAC Domain Name Dispute Supplemental Rules. The Complainant requested a single person panel. The Complaint stated in the Complaint Form that "FAXIAN LI" is the Respondent.

On the same date, the Centre acknowledged receipt of the Complaint and notified the Registrar of the Complaint and requested the Registrar to provide information including (1) whether the Disputed Domain Name was registered with the Registrar, (2) whether the Respondent "FAXIAN LI" is the Registrant or holder of the Disputed Domain Name, (3) whether the Policy for .hk and .香港 domain names is applicable to the current dispute; (4) WHOIS information regarding the Disputed Domain Name; (5) the status of the Disputed Domain Name. The Centre also requested that
appropriate action toward the Disputed Domain Name be taken in accordance with the Policy, such as: prohibit the disputed domain name from transferring to a third party.

On August 5, 2016, the Registrar provided its response to the Centre and provided the WHOIS information regarding the Disputed Domain Name. According to the WHOIS information, the holder of the Disputed Domain Name is FAXIAN LI; the email address of the registrant is "ice8v8@163.com". The Registrar also confirmed that the status of the Disputed Domain Name was that it was prohibited from being transferred or deleted.

On August 5, 2016, the Centre sent the Complaint to the Respondent. The Respondent was then provided with a 15-business day deadline, expiring on August 26, 2016, to file its response both with the Centre and the Complainant. As of August 27, 2016, the Respondent did not file any response with the Centre. Accordingly, on August 30, 2016, the Centre advised the parties by email that the Centre received no response from the Respondent within the required period of time on or before the August 26, 2016 deadline and, as such, the Centre would then proceed to appoint a Panelist for this matter.

Pursuant to the Rules and Supplemental Rules, the Centre, by email dated August 31, 2016, contacted the undersigned, Loke-Khoon Tan (the "Panelist"), requesting his service as a Sole Panelist for this dispute. Subsequently, on September 2, 2016, Loke-Khoon Tan responded and affirmed his ability to act completely, independently and impartially in this matter. Subsequently, the Centre, through an email dated September 2, 2016, notified the Parties of the appointment of Loke-Khoon Tan as the Sole Panelist.

The Panel issued Administrative Order No.1 ("Order No.1") on September 23, 2016. Pursuant to the Order No.1, the Complainant is requested to submit the following documents on or before October 7, 2016.

1. The Power of Attorney issued by the Complainant, in which the Complainant authorizes Wenping & Co. to act as its authorized representative in this Domain Name Dispute; and

2. Supporting evidence in relation to the Complainant's claim under paragraph 3(e) of "Schedule Two" - Factual and Legal Grounds of the Complainant that the content of the Disputed Domain Name is a reproduction of the Complainant's Marks, business name and the information depicted from the Complainant's website at www.dpd.com.

The Order No. 1 affirmed that the Respondent has the right to raise objections to the Complainant's supplemental submission on or before October 17, 2016. Accordingly, the Order No. 1 also extended the deadline by which the decision shall be rendered to November 7, 2016.
On September 30, 2016, the Complainant filed the Power of Attorney, printouts of the content downloaded from the Complainant's website at www.dpd.com and printouts of the content downloaded from the Disputed Domain Name. On the same day, the Centre confirmed receipt of these documents and served the same to the Respondent via email. As of October 19, 2016, the Centre did not receive any comment or objection from the Respondent regarding the submission of the documents by the Complainant.

3. Factual Background

For the Complainant

The Complainant, DPD Dynamic Parcel Distribution GmbH & Co. KG, was incorporated in Germany on June 2, 1998. Its scope of business includes domestic and international parcel and express delivery services. It offers cash-on-delivery, collection requests, collection-upon-delivery, department delivery, exchange, express on Saturday, hazardous goods delivery, ID-check, insurance, packaging, delivery notification by phone, prediction, returns, and parcelshop delivery services.

For the Respondent

Given the Respondent has not filed any responses, the only source for the Panelist to obtain the Respondent's information is from the information provided by the Registrar. The Respondent is FAXIAN LI and he registered the Disputed Domain Name with Shanghai Meicheng Technology Information Development Co. Ltd.

4. Parties’ Contentions

The Complainant

The Complainant has raised the following contentions:

The Complainant possesses three registered trademarks approved by the Trade Marks Registry (the "Registry") of the Government of Hong Kong Special Administrative Region: "DPD", "dpd" and "dpdgroup".

The trademark registration for "DPD" was approved by the Registry and filed on May 12, 2005. The services covered by the registered "DPD" mark are classified under Class 36 and 39; The trademark registration for "dpd" was approved by the Registry and filed on April 1, 2014. The goods/services covered by the registered "dpd" mark are classified under Class 9, 16, 35, 39 and 42; the trademark registration for
"dpdgroup" was approved by the Registry and filed on September 7, 2015. The services covered by the registered "dpdgroup" mark are classified under Class 39.

i. Respondent's domain name is identical or confusingly similar to the Complainant's business name and trademarks.

The Complainant contended that the Disputed Domain Name is identical and/or confusingly similar to the complainant's business name and trademarks. The "HK" should be disregarded. The addition of generic top-level domain names such as ".com" or country code top-level domain name such as .hk or .com.hk to portions of the Disputed Domain Name is irrelevant in relation to the confusingly similar analysis.

To support its arguments, the Complainant has submitted copies of the Trade Mark Records in Hong Kong and for other countries.

ii. Respondent has no rights or legitimate interests in respect of the domain name

According to the Complainant's submission, the Respondent has no rights and/or legitimate interests in respect of the Disputed Domain Name due to the reasons below:

• The Respondent has not asserted any purported legitimate interest. According to the Complainant's search on the trade marks register, there is no registration or pending application for trademarks bearing "DPD" owned or filed by the Respondent at the Registry;

• The Respondent's registration of the Disputed Domain Name appears to have been intended to exploit the Complainant's "DPD" trademark and/or business name, rather than using it in a bona fide offering of goods and/or services and/or a legitimate non-commercial use without intent for commercial gain; and

• the use of the disputed Domain Name by the Respondent constitutes infringement of the Complainant's trade marks in Hong Kong.

iii. The Disputed Domain Name(s) has/have been registered and is/are being used in bad faith

The Complainant's contentions are as follows:

• The Complainant was established in Germany in 1998 and is a subsidiary of GEOPOST SA of France. GEOPOST SA is one of the major Express companies in Europe. Its DPD Group including the Complainant is the second largest international parcel delivery network in Europe having 50,000 delivery experts and a network of 27,450 pick-up stations for delivery of 3.6 million
parcels in 230 countries every day. Further information of the DPD group can be viewed as [www.dpd.com].

- The Complainant or its affiliated companies all over the world have not licensed or otherwise permitted the Respondent to register the domain name incorporating the business name and trademarks "DPD" and "DPD" ("the Complainant's Marks") and there is no affiliation between the parties. The Respondent is not an authorized agent or licensee of the Complainant's products and/or services in any way.

- Registration of the Disputed Domain Name by the Respondent has the effect of preventing the Complainant and its affiliated companies from using their business name and/or trademark rights through a corresponding domain name in Hong Kong.

- The Respondent would not have registered the Disputed Domain Name had he or she conducted a proper trademark search before registering it. In fact, the Complainant had through its attorneys in France & Hong Kong sent a number of cease and desist letters to the Respondent but the Complainant has not received any response from the Respondent.

- The Panel was invited to visit the Disputed Domain Name where the content was said to be a reproduction of the Complainant's Marks, business name and the information depicted from the Complainant's website at [www.dpd.com]. The Complainant was of the view that the Respondent was clearly engaged in cyber-squatting to mislead consumer looking for DPD Group's website.

- According to the Complainant, the content of the website of the Disputed Domain Name is likely to cause confusion, to cause mistake, and to deceive as to the origin, sponsorship, or approval of the Respondent's commercial activities by the Complainant. By using the domain name and relevant content of the webpage, the Respondent has intentionally attempted to confuse or deceive Internet users that they will receive services from the Complainant or its affiliated companies. The Complainant referred to the case of Awesome Kids LLC v Selavy Comm., D2001-0210 (WIPO Apr. 16, 2001) to support the requirements of identical or confusingly similar domain name, namely:

"that the domain name misappropriate sufficient textual components from the mark such that an ordinary Internet user who is familiar with the goods or services distributed under the mark would upon seeing the domain name likely think that owing to the visual and/or phonetic similarity between the mark and the domain name that an affiliation exists between the site identified by that domain name and the owner or licensed users of the mark."
iv. The Complainant asserts that the Disputed Domain Name is not the individual name of the Respondent, or any name which the Respondent is commonly known by. Thus, the Respondent cannot rely on the individual name to claim rights or legitimate interest in relation to the Disputed Domain Name.

The Respondent

The Respondent failed to file any formal response in this proceeding.

5. Findings

According to Paragraph 4a of the HKDNR Domain Name Dispute Resolution Policy (the "Policy") which is applicable hereto, the Complainant has the burden of proving that:

(i) the Disputed Domain is identical or confusingly similar to a trade mark or service mark in Hong Kong in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain; and

(iii) the Disputed Domain has been registered and is being used in bad faith; and

(iv) if the Disputed Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of Domain Name.

(1). Identical/confusing similarity

The first question that arises is whether the Complainant has a trademark on which it can rely. The Complainant claims registered trademark rights for "dpdgroup", "dpd" and "DPD" with the Hong Kong Trademark Registry. The Panel has examined the evidence submitted by the Complainant in this regard and finds that the Complainant has established its rights in the trademarks "dpdgroup", "dpd" and "DPD".

In comparing the trademark "dpd" with the Disputed Domain Name, the Panel notes that the Disputed Domain Name <dpd.hk> incorporates the Complainant's trademark "dpd" in its entirety. It is well-established that in assessing whether a trademark is identical or confusingly similar to a domain name, generic Top-Level Domains such as ".com" should be disregarded. See Société Anonyme des Eaux Minerales d'Evian and Societe des Eaux de Volvic v. Beroca Holdings B.V.I. Limited, WIPO Case No. D2008-0416. The same consideration applies to ".hk" which stands for Hong Kong.
After removing the generic element, only the word "dpd" is left in its entirety.

As such, the Complainant has satisfied the two-fold requirements under Paragraph 4(a)(i) of the Policy in which the Complainant has rights in a trademark and the Disputed Domain Name is confusingly similar to the trademark.

(2) Rights or Legitimate Interests of Respondent

Paragraph 4(c) of the Policy gives a non-exhaustive list of circumstances that be brought forward by the Respondent in order to demonstrate its rights or legitimate interests. Such circumstances can be:

(i) The use of or demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services prior to the dispute;

(ii) The Respondent has been commonly known by the domain name even if it has acquired no trademark rights; or

(iii) The legitimate non-commercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue.

The Panel notes that while the Complainant bears the overall burden of proof under Paragraph 4(a)(ii) of the Policy, the element of possible rights or legitimate interests of Respondent in the Disputed Domain Name involves Complainant proving matters which are peculiarly within the knowledge of the Respondent. As such, the burden of proof shifts to the Respondent once the Complainant makes out a *prima facie* case showing that the Respondent lacks rights or legitimate interests. If the Respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. See: Neusiedler Aktiengesellschaft v. Kulkarni, WIPO Case No. D2000-1769 and Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455.

The Panel accepts the Complainant's submission that the Respondent has not been commonly known by the Disputed Domain Name and the Complainant has never licensed the "dpd" trademark to the Respondent. Therefore, the Panel finds that Complainant has made a *prima facie* case showing that Respondent does not have rights or legitimate interests in respect of the Disputed Domain Name.

The Respondent filed no response. There has been no other communications from the Respondent in connection with this case. There is nothing in the nature of the website to which the Disputed Domain Name revert that suggests that the Respondent might have a right or legitimate interest in the
Disputed Domain Name itself. Without a response, there is nothing else in the case file that indicates that the Respondent has such rights or legitimate interests.

As such, the Respondent has not established a right or legitimate interest in the Disputed Domain Name. Neither is there any other evidence, from all the circumstances of this case, that points to any right or legitimate interest of the Respondent.

(3). **Bad faith**

Paragraph 4(a)(iii) of the Policy sets out a series of circumstances that are to be taken as evidence of the registration and use of a domain name in bad faith, which include but are not limited to the following:

(i) circumstances indicating that the Respondent has registered or 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) the Respondent has engaged in a pattern of registering the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's website 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 the Respondent's website or location or of a product or service on the Respondent's website or location.

Having regard to the above circumstances and the persuasive evidence and submission advanced by the Complainant, the Panel finds that the Disputed Domain Name was registered and used in bad faith. The reasons are as follows:

Based on the website content of the Disputed Domain Name at <dpd.hk>, the Complainant's "dpd" trademark is prominently displayed on the homepage of the Disputed Domain Name. Further, based on the printouts of the content downloaded from the Disputed Domain Name and that
downloaded from the Complainant's website, provided by the Complainant, some contents displayed on the Disputed Domain Name are noted to be identical / highly similar to information depicted at the Complainant's website at www.dpd.com. The Panel finds that such prominent display of the Complainant's "dpd" trademark and contents which are identical / highly similar would confuse the public into thinking that the Disputed Domain Name has a connection with the Complainant.

Therefore, having regard to the evidence submitted by the Complainant, the Panel finds that by using the Disputed Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website. As such, the Panel finds that Paragraph 4(a)(iii) of the Policy is satisfied.

(4). The Panel accepts the Complainant's submission that the Disputed Domain Name is not the individual name of the Respondent, or any name which the Respondent is commonly known by. Thus, the Respondent cannot rely on the individual name to claim rights or legitimate interest in relation to the Disputed Domain Name.

6. Conclusions

Having established all three elements required under Article 4(a) of the policy, the Panel orders that the Disputed Domain Name <dpd.hk> be transferred to the Complainant.

_______________________________
Loke-Khoon Tan

Dated November 7, 2016