.hk Domain Name Dispute Resolution
AWARD BY ARBITRATION PANEL

Complainant: Asia Television Limited
Respondent: 谢朝旭 (XIE Chao Xu)
Case Number: DHK-1800152
Contested Domain Name: <missasia.hk>
Panel Member: Matthew Murphy

1. Parties and Contested Domain Name

The Complainant herein is Asia Television Limited, of 25-37 Dai Shing Street Tai Po Industrial Estate, Tai Po, New Territories, Hong Kong.

The Respondent herein is 谢朝旭 (XIE Chao Xu) of the People’s Republic of China.

The Contested Domain Name is <missasia.hk>, which is registered by the Respondent through Foshan YiDong Network Co., Ltd. at 3/F, Office 1801, Block A, Junning Building, Fu Ning Road, Shancheng District, Foshan, China.

2. Procedural History

The Complaint was filed with the Hong Kong International Arbitration Centre ("HKIAC") on January 4, 2018 and the Complainant chose a sole panelist to review this case in accordance with the HKDNSR Domain Name Dispute Resolution Policy, adopted by the Hong Kong Domain Name Internet Registration Corporation Limited ("HKDNSR") on 30 November 2006 (the Dispute Resolution Policy), the HKDNSR Domain Name Dispute Resolution Policy Rules of Procedure, approved by HKDNSR on 30 November 2004 (the Rules of Procedure) and the HKIAC Supplemental Rules.

On January 5, 2018, the HKIAC confirmed the receipt of the Complaint and transmitted by email to Foshan YiDong Network Co., Ltd. (the Registrar of the domain name) a request for registrar verification in connection with the domain name at issue. On January 6, 2018, the said Registrar verified to the Centre that the Dispute Resolution Policy is applicable to the domain name at issue.

On January 8, 2018, the HKIAC sent to the Complainant, the Notification of Deficiency of the Complaint, requesting the Complainant to update the Respondent’s name in the Complaint within 5 business days which was on or prior to January 15,
2018. On January 8, 2018, the Complainant sent the requested amendment of the Complaint to the HKIAC, and the HKIAC confirmed the receipt of this.

On January 10, 2018, the HKIAC sent the formal Complaint Notice (as well as relevant supporting materials) to the Respondent and requested the Respondent to reply within 15 business days (on or prior to January 31, 2018). The procedures for this case were formally commenced on January 10, 2017.

On February 1, 2018, the HKIAC issued a Default Notice and confirmed that the Respondent did not file a formal reply with the HKIAC, within the required time limit for filing a reply.

On February 8, 2018, the HKIAC appointed Mr. Matthew Murphy as the sole panelist for arbitrating this case. The Panel candidate considered that it was properly constituted and submitted the acceptance notice as well as a statement of impartiality and independence. On the same day, the HKIAC notified both parties and the Panel Mr. Matthew Murphy by email that Mr. Matthew Murphy had been appointed as the sole panelist for arbitrating this case. The HKIAC then formally transferred the case to the Panelist. The Panelist agreed to deliver his decision with respect to the Contested Domain Name on or prior to March 5, 2018.

3. Factual Background

For the Complainant

The Complainant, Asia Television Limited, claims that, it began broadcasting as a subscription/cable television programme service provider in 1957 under the name of Rediffusion Television, making it the first Chinese language television channel worldwide. The Complainant claims that it progressed to free-to-air wireless television broadcasting in 1973, and changed its name to ATV on 24 September 1982, and went on to become one of the most influential television channels in the Chinese-speaking world. According to the Complainant, in 2002, it was granted permission by China's State Administration for Radio, Film and Television to broadcast its Home and World channels in to the Guangdong Pearl River Delta region, and in doing so, became only the fourth non-Mainland Chinese television network allowed to broadcast there.

The Complainant claims that although its free-to-air television license expired in 2016 and the company no longer broadcasts via free-to-air wireless television, it had provided Hong Kong viewers with five programme service channels, such as “ATV Home Channel 11”, “ATV Asia Channel 12” and so on, prior to expiration. Furthermore, the Complainant claims that it had an overseas subscription channel, “ATV Home Channel (America)”, offering subscribers in North America, television programmes in Cantonese 24 hours a day via satellite; and it has offered to the Hong Kong public a wide choice of programmes ranging from news, current affairs, documentaries, travelogue, infotainment, finance, healthcare, women, children, youth,
senior citizen, culture, religion, drama, reality, to sports and horse-racing for many years.

The Complainant claims that it began the first Miss Asia Pageant in 1985 as a local beauty pageant; and in 2004, the Miss Asia Pageant for the first time accepted contestants from jurisdictions other than Hong Kong in Asia. It is said that the grand final of the Miss Asia Pageant was held in Mainland China in 2010; and from 2011 onwards, the Miss Asia Chinese Regional Competitions were expanded to include Chinese contestants from Hong Kong, Macau, China, Taiwan, Canada and the United States. The Complainant further claims that the winners of these overseas competitions were then joined by winners from other Asian countries to compete in the finals. The Complainant contends that it has held 27 Miss Asia Pageants to date (i.e. from 1985 to 2015), and has accumulated goodwill and reputation in the Miss Asia Pageant.

The Complainant claims that it owns a series of Miss Asia trademarks, which have been registered across a wide range of goods and services (including Classes 14, 16, 28, 35, 38 and 41) in various jurisdictions, including Hong Kong and Mainland China. Those trademarks include No. 300440829 & No. 300440801 being multi-class applications in Hong Kong, and No. 4237747 for “MISS ASIA” in class 38 in Mainland China. In addition, the Complainant also claims that it owns and controls the domain name <missasia.com.hk>, which has been registered since 22 March 2004.

For the Respondent

The Respondent, 谢朝旭 (XIE Chao Xu), is an individual located at Wang Yuan Lu 13 Hao, with the email address at joinmore@qq.com. The Respondent registered the Contested Domain Name on May 17, 2017. The Respondent has not filed any Reply to the Complaint.

4. Parties’ Contentions

The Complainant

i) The Contested Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights

The Complainant claims that it has common law rights and registered trade mark rights, in the MISS ASIA trademarks in various jurisdictions, including Hong Kong and Mainland China; and it first used the MISS ASIA trademarks for its first Miss Asia Pageant in 1985 and has continuously used it for subsequent years. The Complainant claims that its trademark registrations in Hong Kong have a registration date of 17 June, 2005, which is significantly earlier than the registration date of the Contested Domain Name (i.e. 17 May, 2017). The Complainant claims that it has also built protectable goodwill in the Miss Asia trademarks through extensive use and promotion, as discussed above.
The Complainant further claims that the Contested Domain Name is identical to the English words of the MISS ASIAtrademarks in which the Complainant has rights, and the suffix ".hk" is merely a general geographic indication and does not help to distinguish the Contested Domain Name from the Complainant's "Miss Asia" English component of the MISS ASIAtrademarks. To the contrary, ".hk" is likely to cause confusion that the Disputed Domain Name is related to the Complainant's Hong Kong business and Miss Asia Pageants in Hong Kong.

ii) The Respondent has no rights or legitimate interests in the Disputed Domain Name

The Complainant claims that the Respondent has no legitimate right or interest in the Contested Domain Name for the following reasons: 1) The Respondent's name "谢朝旭 XIE Chao Xu" has no correlation with the Contested Domain Name; 2) The Complainant has never authorized anyone to register the Contested Domain Name anywhere (including Hong Kong). There is no relationship between the Complainant and the Respondent. The Respondent is neither affiliated with the Complainant, nor licensed by the Complainant to register the Contested Domain Name; 3) The Complainant has reason to believe that the registration of the Contested Domain Name in May 2017 is calculated to take advantage of the re-launch of the Complainant's Miss Asia Pageant in bad faith; 4) The Complainant has done an online trade mark search in Mainland China and Hong Kong using the Respondent's English and Chinese names and found that the Respondent has not applied for, or registered, any trademarks which have any correlation with the Contested Domain Name.

iii) The Contested Domain Name has been registered and is being used in bad faith

The Complainant claims that the Contested Domain Name has been registered and is being used in bad faith, for the following reasons: 1) The Contested Domain Name was registered on 17 May, 2017, by which time the Complainant had already acquired substantial rights and goodwill in the Miss Asia Marks in Hong Kong and worldwide. At the time of registration by the Respondent, the Respondent must have been aware of the MISS ASIAtrademarks and the Complainant's rights thereto; 2) The Complainant began using the MISS ASIAtrademarks in Hong Kong on its Miss Asia Pageants in 1985 and over the years it has since become highly renowned; 3) The Respondent is only passively holding the Contested Domain Name, which suggests that the Respondent is not making any genuine or legitimate use of the Contested Domain Name and has registered the Contested Domain Name simply for the purpose of preventing the Complainant from registering the same. Also, the Contested Domain Name is very likely to cause confusion among the public.

The Respondent

The Respondent did not submit any Reply.

5. Findings by the Arbitration Panel
According to Paragraph 4(a) 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 Complainant, by submitting its trademark registration holdings information regarding Hong Kong and Mainland China, has proved that it is entitled to the ownership of the MISS ASIAtrademarks. Obviously, the Contested Domain Name <missasia.hk> completely incorporates the English part of the Complainant’s “MISS ASIA” trademark. The first and immediately striking element in the domain name at issue is the Complainant's brand or trademark - Adoption of the brand in the domain name is inherently likely to lead people to believe that the Complainant is connected with it - See: Dixons Group Plc v. Mr. Abu Abdullaah, WIPO Case No. D2000-0146. As to the“.hk” in the Contested Domain Name, it should be ignored when it comes to deciding confusingly similarity - See: Rohde & Schwarz GmbH & Co. HG v. Pertshire Marketing, Ltd., WIPO Case No. D2006-0762. Thus, the Contested Domain Name and the Complainant’s “Miss Asia” trademark possess similarity that is sufficient to cause confusion.

Accordingly, the Panel concludes that the Contested Domain Name is confusingly similar to the Complainant's mark and the Complainant has satisfied Paragraph 4(a)(i) of the HKDNR Domain Name Dispute Resolution Policy.

(2) Rights or Legitimate Interests of Respondent

When it comes to determine whether the Respondent has any legal right and/or interest in the Contested Domain Name or not, the mere registration of the Contested Domain Name by the Respondent itself is not sufficient to prove that it owns legal rights and interests therein; otherwise, “all registrants would have such rights or interests, and no complainant could succeed on a claim of abusive registration” – See: WIPO Case Adobe Systems Incorporated v. Domain OZ, D2000-0057. In the current case, the Panel notes the Respondent has not proved, and there is no evidence indicating that, the Respondent has used the Contested Domain Name or a name corresponding to the Contested Domain Name in connection with a bona fide offering
of goods or services; nor has the Respondent been commonly known by the Contested Domain Name or has made a legitimate noncommercial or fair use thereof, as is provided in Paragraph 4(d) of the HKDNR Domain Name Dispute Resolution Policy.

Accordingly, the Panel concludes that the Contested Domain Name is confusingly similar to the Complainant’s trademark and the Complainant has satisfied Paragraph 4(a)(ii) of the HKDNR Domain Name Dispute Resolution Policy.

(3) Bad faith

Based on the following circumstances, it is inferred that the Respondent may well have been aware of the Complainant’s “MISS ASIA” trademark and its value, when he registered the Contested Domain Name, and therefore, such registration constitutes bad faith registration: 1) highly similarity between the Contested Domain Name and the Complainant’s trademark; 2) highly similarity between the Contested Domain Name and domain name (missasia.com.hk) owned by the Complainant; 3) there is no legal nor factual relationship or connection between the Respondent and the Contested Domain Name and/or the MISS ASIA trademark, nor any other justification for the registration of the Contested Domain Name by the Respondent.

Furthermore, the concept of a domain name “being used in bad faith” is not limited to positive action; inaction is within the concept - See: WIPO Case Telstra Corporation Limited v Nuclear Marshmallows, D2000-0003. Accordingly, given the circumstances of the case herein: 1) the fame of the Complainant and its trademark; 2) the similarity between the Contested Domain Name and the Complainant’s trademark; 3) the lack of justification for the Respondent to register the Contested Domain Name, and 4) the lack of evidence of any actual or contemplated good faith use of the domain name thereby, it is inferred that the passive holding of the Contested Domain Name by the Respondent, falls into one of the circumstances set out in Paragraph 4(b) of the HKDNR Domain Name Dispute Resolution Policy, that proves bad faith registration or use. Thus, the Panel concludes that the registration and holding of the Contested Domain Name by the Respondent meets the condition that it “is being used in bad faith”.

Accordingly, the Panel concludes that the Contested Domain Name is confusingly similar to the Complainant’s trademark and the Complainant has satisfied Paragraph 4(a)(iii) of the HKDNR Domain Name Dispute Resolution Policy.

(4) If the Contested Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of domain name

The Respondent is not called “Miss Asla” or anything similar. Consequently, the Registrant does not meet the registration requirements for that individual category of domain name.
Accordingly, the Panel concludes that the Contested Domain Name is confusingly similar to the Complainant’s trademark and the Complainant has satisfied Paragraph 4(a)(iv) of the HKDNR Domain Name Dispute Resolution Policy.

6. Award

Pursuant to Paragraph 15 of the HKDNR Domain Name Dispute Resolution Policy Rules of Procedure, this Panel orders that the domain name <missasia.hk> be transferred to the Complainant.

Date of Issue: February 26, 2018

Place of arbitration: Beijing

[Signature]
Matthew Murphy
Sole Panelist of the Arbitral Tribunal