.hk Domain Name Dispute Resolution
ARBITRATION PANEL DECISION

Complainant:  Bluestack Systems, Inc
Respondent:  Fuzhou Kaopu Network Co Ltd (福州靠譜網絡有限公司)
Case Number:  DHK-1900165
Contested Domain Name:  <bluestacks.hk>
Panel Member:  Sebastian Hughes

1. Parties and Contested Domain Name

The Complainant is Bluestack Systems, Inc, of 2105 South Bascom Avenue, Suite #380, Campbell, CA 95008, United States of America, represented by Masilamani Law Partners.

The Respondent is Fuzhou Kaopu Network Co Ltd (福州靠譜網絡有限公司), of 1F,B-12#,Software Park, Gulou District, Fuzhou Fuzhou 350001, Fujian, China.

The contested domain name is <bluestacks.hk> (the “Domain Name”), registered by the Respondent with Web Commerce Communications (Singapore) Pte Ltd.

2. Procedural History

The Complaint was filed with the Hong Kong International Arbitration Centre (the “Centre”) on May 27, 2019. On May 27, 2019, the Centre transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 27, 2019, the Registrar transmitted by email to the Centre its verification response disclosing an address for the Respondent which differed from the address for the Respondent listed in the Complaint. The Centre sent an email communication to the Complainant on July 22, 2019 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on July 22, 2019.

The Centre verified that the Complaint satisfied the formal requirements of the HKDNR Domain Name Dispute Resolution Policy (the “Policy”) and the HKDNR Domain Name Dispute Resolution Rules (the “Rules”).
In accordance with paragraphs 2(a) and 4(a) of the Rules, the Centre formally notified the Respondent of the Complaint, and the proceeding commenced, on August 1, 2019.

In accordance with paragraph 5(a) of the Rules, the due date for Response was August 22, 2019. The Respondent did not submit any response. Accordingly, the Centre notified the Parties of the Respondent’s default on August 27, 2019.

The Centre appointed Sebastian Hughes as the sole Panelist in this matter on September 3, 2019. The Panel finds that it was properly constituted. The Panel has confirmed its impartiality and independence, in accordance with paragraph 7 of the Rules.

3. Factual Background

A. Complainant

The Complainant is a company incorporated in California and founded in 2009, and is a leading developer and provider of software for enabling Android operating system based applications to run on non-android operating systems.

The Complainant is the owner of numerous registrations in jurisdictions worldwide for the BLUESTACKS word and device trade marks (the “Trade Marks”), including the following registrations in Hong Kong:

1. Trade Mark Registration No. 303430836 for the word mark BLUESTACKS (the “Word Mark”) in classes 9 and 42, with a registration date of June 4, 2015;

2. Trade Mark Registration No. 303335346 for the device mark (the “Device Mark”) in classes 9 and 42, with a registration date of March 18, 2015;

3. Trade Mark Registration No. 304247866 for the Word Mark in classes 35 and 41, with a registration date of August 21, 2017; and

4. Trade Mark Registration No. 304247857 for the Device Mark in classes 35 and 41, with a registration date of August 21, 2017.

The Complainant’s earliest registration for the Device Mark is registration No. 4299625 in the United States of America, with a registration date of March 12, 2013.

The Complainant has been the registrant of the domain name <bluestacks.com> comprising the Word Mark since October 27, 2010; and has been using the Trade Marks continuously since 2009 (including to promote and sell the Complainant’s software products on the Complainant’s website at <www.bluestacks.com>).
B. Respondent

The Respondent is a company incorporated in China, and was formerly a distributor of the Complainant’s software products under the Trade Marks under a licence agreement dated March 28, 2014 (the “Licence Agreement”), whereby the Respondent was granted a limited non-exclusive licence to distribute the Complainant’s software products under the Trade Marks in China and in Hong Kong. The Licence Agreement was terminated on 27 May 2015.

C. The Contested Domain Name

The Domain Name was registered on May 4, 2013.

D. Use of the Contested Domain Name

The Domain Name is used in respect of a Chinese language website featuring prominently the Trade Marks and apparently promoting and offering for sale the Complainant’s software products (the “Respondent’s Website”). The various signs and logos used on the Respondent’s Website include:

1. The Device Mark together with the wording “蓝叠中文网” (“Bluestacks China Website” in Chinese);

2. The Device Mark together with the wording “Powered by BlueStacks”; and

3. The website footer “© 版权所有 - 蓝叠中文网 (BlueStacks)- All Rights Reserved 闽 ICP 备 13020497 号-2”.

4. Parties’ Contentions

The Complainant

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

The Respondent

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

5. Findings

According to Paragraph 4(a) of the HKDNR Domain Name Dispute Resolution Policy (the "Policy"), the Complainant has the burden of proving that:
1. 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

2. The Respondent has no rights or legitimate interests in respect of the Disputed Domain; and

3. The Disputed Domain has been registered and is being used in bad faith; and

4. 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/Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

The disputed domain name comprises the Trade Mark in its entirety and is therefore, excluding the ccTLD “.hk”, identical to the Trade Mark.

Accordingly, the first element under paragraph 4(a) of the Policy has been made out.

(2). Rights or Legitimate Interests

Paragraph 4(d) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a registrant has rights or legitimate interests in a contested domain name:

1. Before any notice to the registrant of the dispute, the registrant’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 in Hong Kong; or

2. The registrant (as an individual, business, or other organisation) has been commonly known by the domain name, even if the registrant has acquired no trade mark or service mark rights in Hong Kong; or

3. The registrant has trade mark or service mark rights that are identical to the domain name the registrant is holding; or

4. The registrant 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.

There is no evidence that the Complainant has authorised, licensed, or permitted the Respondent to register and use the Domain Name. The Complainant has prior rights in the Trade Marks which precede the Respondent’s registration of the Domain Name. The Panel finds on the record that there is therefore a prima facie case that the
Respondent has no rights or legitimate interests in the Domain Name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that it has acquired any trade mark rights in respect of the Domain Name or that the Domain Name has been used in connection with a bona fide offering of goods or services. To the contrary, the Domain Name has been used in respect of the Respondent’s Website, in order to pass off the Respondent’s Website as the official website in China for the Complainant’s Bluestack software products.

According to the undisputed evidence filed by the Complainant herein, the majority of the links on the Respondent’s Website redirvert to websites which promote and sell the Respondent’s competing android emulator software products and services. Furthermore, the Respondent’s Website contains a “download now” link to a counterfeit version of the Complainant’s BLUESTACKS App Player.

The Panel notes further that, under the relevant terms of the Licence Agreement:

1. The Respondent agreed that the Complainant retained all rights in the licensed intellectual property of the Complainant, including the Trade Marks;
2. The Respondent’s limited licence to use the Trade Marks expired upon termination of the Licence Agreement; and
3. There were no provisions permitting the Respondent to register and use any domain names comprising the Trade Marks.

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

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

The Panel finds that the Respondent has failed to produce any evidence to establish rights or legitimate interests in the Domain Name. The Panel therefore finds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

(3). Bad faith

In light of the manner of use of the Respondent’s Website, as detailed under Section 5(2) above, the Panel finds that the Domain Name has been registered and used in bad faith.

Accordingly, the Complainant fulfils the third condition of paragraph 4(a) of the Policy.
(4). 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

The fourth limb under paragraph 4(a) of the Policy is not applicable to this proceeding, as the Domain Name has not been registered by an individual person.

6. Conclusion

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <bluestacks.hk> be transferred to the Complainant.

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Sebastian Hughes
Dated: September 20, 2019