

## **ADMINISTRATIVE PANEL DECISION**

42 v. New Ventures Services, Corp  
Case No. D2023-0159

### **1. The Parties**

The Complainant is 42, France, represented by Scan Avocats AARPI, France.

The Respondent is New Ventures Services, Corp, United States of America (“United States”).

### **2. The Domain Name and Registrar**

The disputed domain name <42hk.com> (the “Domain Name”) is registered with Secondround Names LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 12, 2023. On January 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 17, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 7, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 8, 2023.

The Center appointed Jeremy Speres as the sole panelist in this matter on February 14, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is a free and non-profit private computer programming school founded in 2013 under its 42 mark. The Complainant has 47 campuses in 26 countries.

The Complainant owns trade mark registrations for its 42 mark in numerous jurisdictions, including the following which are relevant to this matter:

- International Trade Mark registration No. 1488612, 42 (stylised), designating, amongst others, the Respondent's country of the United States, in classes 35, 38, 41 and 42 with registration date June 26, 2019; and
- Hong Kong, China trade mark registration No. 305518620, 42 HK (word), in classes 9, 41 and 42 with registration date June 21, 2021.

The Complainant owns numerous domain names incorporating "42", most relevant for this matter being <42hongkong.com> which was registered on November 8, 2021.

The Domain Name was registered on November 19, 2021, and resolves to a pay-per-click ("PPC") advertising page, which also offers the Domain Name for sale.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the Domain Name is confusingly similar and identical to its well-known 42 and 42 HK marks, that the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name was registered and used in bad faith given that it has been offered for sale taking advantage of the Complainant's reputation in its marks.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

##### **A. Identical or Confusingly Similar**

The Domain Name is plainly identical to the Complainant's registered 42 HK mark. Spaces in a trade mark can be disregarded for purposes of assessing identity (*Novomatic AG v. Oleg Bakanach*, WIPO Case No. [D2020-1667](#)). The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

##### **B. Rights or Legitimate Interests**

The Complainant's un rebutted evidence establishes that its 42 mark was registered and well known within its industry prior to registration of the Domain Name. The Domain Name is confusingly similar and identical to the Complainant's marks and the Complainant has certified that the Domain Name is unauthorised by it.

Generally speaking, UDRP panels have found that domain names identical to a complainant's trade mark carry a high risk of implied affiliation (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 2.5.1).

The Respondent has not explained why it chose the Domain Name. If the Respondent had any rights or legitimate interests, the Respondent would have reasonably been expected to assert them (*Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#)). Given what is stated below in relation to bad faith, the Respondent either knew or should have known that its actions would have taken unfair advantage of the Complainant's marks, and the use which it has made of the Domain Name cannot confer rights or legitimate interests.

There is thus no evidence that any of the circumstances set out in paragraph 4(c) of the Policy pertain, nor any others which may confer rights or legitimate interests on the Respondent. The Complainant has satisfied paragraph 4(a)(ii) of the Policy by virtue of having made out an unrebutted *prima facie* case ([WIPO Overview 3.0](#) at section 2.1).

### **C. Registered and Used in Bad Faith**

The Panel notes that the Respondent has been the unsuccessful respondent in at least 31 prior UDRP cases (e.g. *Nicolas Ghesquiere v. THIS DOMAIN MAY BE FOR SALE AT HTTPS://WWW.NETWORKSOLUTIONS.COM, New Ventures Services, Corp*, WIPO Case No. [D2019-2982](#)). From some of those past UDRP decisions it is clear that it is the Respondent's practice to place PPC adverts on the domain names it registers and to list them for sale, as in this case.

The Complainant presented evidence that the Domain Name resolved to pornographic content as at April 29, 2022. The Panel has viewed publicly accessible historical Whois records for the Domain Name and has established that the Domain Name was registered in the name of a third party, one "ping hua li", from November, 2021 until November, 2022. Thus, the Respondent does not appear to be responsible for the pornographic content referred to in the Complaint. It would appear that the Respondent subsequently took transfer of the Domain Name and there is no evidence in the record or in the Internet Archive indicating that the Respondent used the Domain Name for pornography.

Thus, when the Respondent acquired the Domain Name, it monetised it through PPC adverts and listed it for sale. The Panel believes that it is appropriate, in the circumstances of this case, to infer that the Respondent either intended to take advantage of the Complainant's trade mark for its own commercial gain by monetising and selling the Domain Name, or that it should have known that this would have been a consequence of its actions ([WIPO Overview 3.0](#) at section 3.2.2).

Firstly, the Respondent is clearly an experienced domainer with a long history of UDRP decisions against it. As such, the Respondent has been put on notice, many times, that its business model has been harmful to third party trade mark rights, and it is reasonable to expect such a respondent to take care in its future dealings to avoid such harm occurring again ([WIPO Overview 3.0](#) at section 3.2.3).

Secondly, the Complainant's practice for naming its campuses worldwide typically follows the pattern of 42 plus the city's name, which matches the Domain Name's composition. The Complainant states that it intends to open a campus in Hong Kong, China. The Complainant owns a corresponding registered trade mark - 42 HK - which is identical to the Domain Name, and it owns a domain name - <42hongkong.com> - which is highly similar to the Domain Name and which was registered a mere 11 days prior to the Domain Name. That timing is suggestive, and given the Complainant's longstanding naming pattern it would have been readily apparent to the Respondent, if it had conducted even cursory online searches, that the Domain Name may have taken advantage of the Complainant's goodwill and marks.

Thirdly, the Domain Name is offered for sale for an amount which is likely, without evidence from the Respondent to the contrary, in excess of the Respondent's out-of-pocket expenses relating directly to the Domain Name. Thus, paragraph 4(b)(i) of the Policy is relevant.

Fourthly, the Panel draws an adverse inference from the Respondent's failure to take part in the present proceeding where an explanation is certainly called for ([WIPO Overview 3.0](#) at section 4.3).

The Complainant has satisfied paragraph 4(a)(iii) of the Policy.

## **7. Decision**

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 <42hk.com> be transferred to the Complainant.

*/Jeremy Speres/*

**Jeremy Speres**

Sole Panelist

Date: February 20, 2023