

ADMINISTRATIVE PANEL DECISION

Banyan Tree Holdings Limited v. Arfan Marwazi Ismail, A M Ismail
Case No. D2023-2595

1. The Parties

The Complainant is Banyan Tree Holdings Limited, Singapore, represented by Bird & Bird ATMD LLP, Singapore.

The Respondent is Arfan Marwazi Ismail, A M Ismail, Thailand.

2. The Domain Name and Registrar

The disputed domain name <angsanquanlan.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 16, 2023. On June 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 20, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 21, 2023 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 amendment to the Complaint on June 23, 2023.

The Center verified that the Complaint together with the amendment to 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 June 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 21, 2023.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on July 25, 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

Given that no Response was filed, the following facts are based on the submissions in the Complaint and the Annexes to the Complaint.

The Complainant is part of the Banyan Tree Group, an international group of companies in the hospitality sector.

The Complainant is the owner of several trade marks for ANGSANA including the following:

- Singapore trade mark ANGSANA, Registration No. 40201713688T, registered as from July 14, 2017; and
- Thailand trade mark ANGSANA (and device) Registration No. BOR14457, registered on March 8, 2000.

The Complainant is also the owner of domain names reflecting its trade mark including <angsana.com>.

The Domain Name was registered on May 9, 2020. The Domain Name does not currently resolve to an active website. The Domain Name used to direct to a website with various content including pictures of women models in underwear and information about the island of Quan Lan in Viet Nam as well as a statement offering the Domain Name for sale through a third-party website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to the ANGSANA trade mark in which the Complainant has rights. The Complainant contends that the ANGSANA trade mark is clearly recognizable within the Domain Name and the fact that it is accompanied by a descriptive term "Quan Lan" (which refers to the geographical location Quan Lan Island in Viet Nam) does not prevent a finding of confusing similarity.

The Complainant asserts that the Respondent has no rights to or legitimate interests in respect of the Domain Name. The Complainant points to the use of the Domain Name to point to a website with various content including pictures of women models in underwear and information about the island of Quan Lan in Viet Nam as well as a statement offering the Domain Name for sale through a third-party website to conclude that the Respondent has no genuine intention to use the Domain Name in connection with a *bona fide* offering of goods and services or any other commercial activity. The Complainant also contends that it is not aware of any evidence indicating that the Respondent is commonly known by the Domain Name.

The Complainant contends that the Domain Name was registered and is being used in bad faith. The Complainant argues that it is highly unlikely that the Respondent would have been unaware of the Complainant's rights in the ANGSANA trade mark before it registered the Domain Name. The Complainant points to the reputation of the ANGSANA trade mark in the region where the Respondent is based, including in Thailand and Viet Nam. The Complainant thus considers that the Domain Name was registered in bad faith. The Complainant also contends that the Domain Name is being used in bad faith by the Respondent. The Complainant points to the past content associated with the Domain Name which included an offer to sell the Domain Name via a third party website for a price far in excess of the Respondent's out-of-pocket expenses in relation to the Domain Name. In addition, the Complainant asserts that the past content of the

website associated with the Domain Name which contained adult content was an attempt on the part of the Respondent to tarnish the ANGSANA trade mark of the Complainant. Finally, the Complainant considers that the Respondent's use of a proxy service to mask its true identity in Whois databases suggests that it is intending to deliberately avoid being notified of any UDRP proceeding filed against it.

B. Respondent

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

6. Discussion and Findings

In order to prevail, the Complainant must substantiate that the three elements of paragraph 4(a) of the Policy have been met, namely:

- (i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

In the case of default by a party, as is the case here, paragraph 14(b) of the Rules makes it clear that if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, these Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

In the absence of a Response from the Respondent whereby the Respondent did not object to any of the contentions from the Complainant, the Panel will have to base its decision on the basis of the Complaint and supporting Annexes.

A. Identical or Confusingly Similar

In light of the evidence provided by the Complainant, the Panel is satisfied that the Complainant has substantiated that it holds valid trade mark rights in ANGSANA.

The second point that has to be considered is whether the Domain Name is identical or confusingly similar to the trade mark ANGSANA in which the Complainant has rights.

At the second level, the Domain Name incorporates the Complainant's ANGSANA trade mark in its entirety with the addition of the term "Quan Lan" (which refers to the geographical location Quan Lan island in Viet Nam). The Panel finds that this addition does not prevent a finding of confusing similarity between the Complainant's trade mark and the Domain Name. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)).

Then there is the addition of the generic Top-Level Domain ("gTLD") ".com". As is widely accepted, the addition of a gTLD such as ".com" is merely a technical registration requirement and as such is typically disregarded under the first element confusing similarity test.

Thus, the Panel finds that the Domain Name is confusingly similar to a trade mark or service mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out relevant circumstances that could demonstrate that a respondent has rights or legitimate interests in a domain name, namely:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent’s] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(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 organization) ha[s] been commonly known by the domain name, even if [the respondent] ha[s] acquired no trade mark or service mark rights; or

(iii) [the respondent is] making a legitimate noncommercial 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.”

Numerous previous panels have found under the UDRP that once a complainant makes a *prima facie* showing that the respondent does not have rights or legitimate interests in a domain name, the burden of production shifts to the respondent to rebut the showing by providing evidence of its rights or legitimate interests in the domain name.

Having reviewed the Complainant’s assertions and evidence, the Panel is satisfied that the Complainant has made a *prima facie* showing that the Respondent does not have rights or legitimate interests in the Domain Name.

There is no evidence that the Respondent is commonly known by the Domain Name especially given that the Respondent chose not to respond.

The Domain Name is currently inactive, and was used to direct to a website with various content including pictures of women models in underwear and information about the island of Quan Lan in Viet Nam as well as a statement offering the Domain Name for sale through a third-party website.

Given the overall circumstances of the case, including the reputation of the ANGSANA trade mark and the risk of implied affiliation carried by the composition of the Domain Name, the Panel concludes that the Respondent’s past and current use of the Domain Name cannot be seen as a legitimate noncommercial or fair use of the Domain Name nor can it be seen as a *bona fide* offering of goods or services.

Thus, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a number of relevant non-exhaustive circumstances, which can be deemed to constitute evidence of registration and use of a domain name in bad faith, namely:

(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 trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent’s] documented out-of-pocket costs directly related to the domain name; or

- (ii) [the respondent has] registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; 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 online 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.

Given the circumstances described in the Complaint and the documentary evidence provided by the Complainant, the Panel finds that the Domain Name was registered in bad faith.

The Domain Name is confusingly similar to the trade mark ANGSANA of the Complainant and this cannot be a coincidence.

The Complainant has provided evidence of the extent of the use of the trade mark ANGSANA, particularly in the region where the Respondent is based so that it seems highly unlikely that the Respondent would not have been well aware of the Complainant and its trade mark at the time of registration of the Domain Name. The Panel finds that when registering the Domain Name, the Respondent had the Complainant's trade mark in mind and targeted it specifically. This is supported by the fact that (i) the ANGSANA trade mark is reproduced in its entirety in the Domain Name, (ii) "Quan Lan", the geographical term appended to the ANGSANA trade mark in the Domain Name, corresponds to a location where the Complainant had plans to open a new hotel as announced publicly by the Complainant and (iii) the Respondent is based in Thailand where the Complainant was initially founded.

Thus, the Panel finds that the Domain Name was registered in bad faith.

As for use of the Domain Name in bad faith, given the circumstances described in the Complaint and the documentary evidence provided by the Complainant, the Panel is satisfied that the Domain Name is being used in bad faith.

The Domain Name used to direct to a website containing a statement offering the Domain Name for sale via a third-party website for a consideration likely in excess of the Respondent's out-of-pocket expenses in relation to the Domain Name. This circumstance clearly falls within the scope of paragraph 4(b)(i) of the Policy.

As for the current use of the Domain Name, it is currently inactive. Passive use itself would not prevent a finding of the Respondent's bad faith given the overall circumstances here, specifically the reputation of the Complainant's ANGSANA trade mark. The Domain Name used to direct to a website with various content including pictures of women models in underwear and information about the island of Quan Lan in Viet Nam. The Panel finds that by using the Domain Name, the Respondent had intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of a product on the Respondent's website.

The fact that the Respondent chose not to object to the Complainant's assertions can only reinforce the Panel's view that the Domain Name is being used in bad faith.

Thus, the Panel finds that the Domain Name was registered and is being used in bad faith.

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 <angsanquanlan.com> be transferred to the Complainant.

/Vincent Denoyelle/

Vincent Denoyelle

Sole Panelist

Date: August 8, 2023