

ADMINISTRATIVE PANEL DECISION

NTT Docomo Inc. v. Jhon Tanaka, Bokeponline
Case No. D2024-3034

1. The Parties

The Complainant is NTT Docomo Inc., Japan, represented by Ohno & Partners, Japan.

The Respondent is Jhon Tanaka, Bokeponline, Malaysia.

2. The Domain Name And Registrar

The disputed domain name <shintaikan.live> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 25, 2024. On July 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 25, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (REDACTED FOR PRIVACY, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 31, 2024, 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 August 1, 2024.

The Center verified that the Complaint together with the amended 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 September 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 26, 2024. The Respondent sent an email communication to the Center on September 6, 2024. The Center notified the Parties of the commencement of panel appointment process on September 27, 2024.

The Center appointed Haig Oghigian as the sole panelist in this matter on October 11, 2024. 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 Japanese telecommunications company whose business covers a wide variety of integrated ICT business, including mobile phone services, domestic inter-prefectural communications services, international communications services, solutions services, and system development services and related services. The Complainant is one of the largest mobile phone operators in Japan and serves over 86 million customers in Japan via advanced wireless networks. The Complainant has foreign subsidiaries or branches in the United States of America (“United States”), Germany, United Kingdom, China, the Republic of Korea, Philippines, Singapore, and Guam, United States.

The Complainant is the owner of three registered trademarks including the term “新体感” (transliterated as “shintaikan”) in Japan:

Trademark (Transliteration)	Registration Number	Application Date	Registration Date	Nice Class
新体感ライブ CONNECT (“shintaikan live connect”)	6341169	December 4, 2019	January 15, 2021	9, 35, 38, 41, and 42
新体感トラベルガイド (“shintaikan travel guide”)	6325625	November 14, 2019	December 7, 2020	9, 35, 39, 41, and 42
新体感観光サービス (“shintaikan kanko service”)	6284959	July 18, 2019	August 27, 2020	9, 35, 39, 41, and 42

The Complainant provided the video streaming service originally called “Shintaikan Live” and later renamed as “Shintaikan Live CONNECT”, which allowed users to enjoy various videos of live music events and stage performances using multi-angle (multi-viewpoint) and high-resolution (8K) virtual-reality live viewing on their smartphones and other devices, as one of the commercial fifth-generation mobile communications systems (5G) services. The Complainant claims that it registered and used the disputed domain name from August 2018 to August 2021 for the above video streaming service platform website.

The disputed domain name was registered on September 14, 2021, around a month after the Complainant claims it ceased to use it.

The disputed domain name redirects to a website titled “OLXTOTO” written in Indonesian which advertises online lottery gambling services called “Toto Macau” (Annex 7).

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant's contentions are as follows.

As to whether the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, the Complainant contends that the disputed domain, which consists of the word "shintaikan" in its entirety and the generic Top-Level Domain (the "gTLD") ".live", contains the transliteration of the Complainant's trademark 新体感ライブ CONNECT ("shintaikan live connect") and is confusingly similar except that the trademark includes the word "connect". It further argues that the combination of Chinese characters "新体感" ("shintaikan") and Japanese katakana syllabary "ライブ" ("live") has a nuance of "new experiential live" or "new sensory live", but was not commonly used as a generic or descriptive term in Japan. On the other hand, the word "connect" is highly descriptive in the field of online services including video streaming services. Therefore, "新体感ライブ" ("shintaikan live") is the main and attractive part of the trademark "新体感ライブ CONNECT" and therefore is almost identical or confusingly similar to the disputed domain name in its entirety.

In terms of rights and legitimate interests in respect of the disputed domain name, the Complainant contends that the Respondent has no such rights or legitimate interests, given that the Respondent concealed itself on the Whois database, and that there is no evidence that the Respondent is commonly known by the name "shintaikan" or of the disputed domain name. The Complainant also states that because the Respondent uses the website to which the disputed domain name resolves for automatically redirecting to the website "www.silentearth.org" titled "OLXTOTO" written in Indonesian which advertises online lottery gambling services called "Toto Macau", the Respondent's activities show that the Respondent has an intent to obtain commercial gain by misleadingly diverting consumers or tarnishing the Shintaikan trademarks. The Complainant argues that since online gambling is illegal in Japan, Indonesia and many other countries, the Respondent's such use of the disputed domain name would never qualify as a bona fide offering of goods or services as well as a legitimate noncommercial or fair use (the Complainant refers to section 2.13 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

The Complainant contends that the disputed domain name was registered and is being used in bad faith, arguing that Japanese pop music and Japanese idol groups are very popular in Indonesia and therefore, the Complainant's video streaming service "Shintaikan Live" or "Shintaikan Live CONNECT" was widely used not only in Japan but also in Indonesia. The Complainant cites the Indonesian Wikipedia page relating to "Konser kelulusan" (in Indonesian) ("graduation concert" in English), which refers to the disputed domain name at note 85 as evidence that the Respondent should reasonably have been aware of the Complainant. Furthermore the Complainant alleges that because the disputed domain name is being used to redirect to a page that appears to be an online advertising platform for casinos in Macau, China that promotes gambling, the Respondent is using the disputed domain name to attract Internet users to the webpage for commercial gain by creating a likelihood of confusion with the Complainant's mark of the service of the website contrary to paragraph 4(b)(iv) of the Policy (see *Sanofi v. Bing Zou*, WIPO Case No. [D2018-2656](#)). Finally, the Complainant demonstrated through a Reverse Whois service that the Respondent has registered several domain names with third-party trademarks, such as "PARALYMPIC", which the Respondent, according to the Complainant, does not have the right or authority to use thereby showing that the Respondent has engaged in a pattern of registration of domain names including other well-known trademarks in bad faith.

B. Respondent

The Respondent did not substantively reply to the Complainant's contentions, only saying "Thank you for contacting me, I really appreciate you. May I know where I went wrong? Because I bought it from an expired domain on namecheap. And what should I do?".

6. Discussion And Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. The second-level of the disputed domain name consists only of the transliteration of the dominant element of the Complainant's 新体感-formative trademarks (namely, "shintaikan"). With regard to the Complainant's 新体感ライブ CONNECT ("shintaikan live connect") trademark, the disputed domain name only omits the English word "connect" from the Complainant's trademark and includes the "live" element as its gTLD, which may be considered here since it forms part of the relevant trademark for comparison. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.11 and 1.14.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise. Further, the composition of the disputed domain name, namely the use of the transliteration "shintaikan" of the dominant element of the Complainant's trademark together with the gTLD ".live", which also corresponds to the Complainant's trademark as mentioned above, carries a risk of implied affiliation to the Complainant that cannot constitute fair use. This finding is reinforced given the commercial use to which the disputed domain name has been put and the fact that the Complainant has provided evidence corroborating its prior use of the disputed domain name and thus suggests that the Respondent is likely seeking to capitalize on the preexisting Internet traffic and recognition of the disputed domain name as being affiliated or owned by the Complainant.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent uses the disputed domain name to redirect to a gambling website in order to seek commercial gain. The Panel finds that such conduct where the Respondent sought to capitalize on the Complainant's trademark by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation of the disputed domain name clearly indicates the Respondent's bad faith, as proscribed by the Policy at paragraph 4(b)(iv).

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third element of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 5 of the Rules, the Panel orders that the disputed domain name <shintaikan.live> be transferred to the Complainant.

/Haig Oghigian/

Haig Oghigian

Sole Panelist

Date: October 25, 2024