

## **ADMINISTRATIVE PANEL DECISION**

Huawei Technologies Co. Ltd. v. Jingeng Hong

Case No. DAE2014-0004

### **1. The Parties**

The Complainant is Huawei Technologies Co. Ltd. of China, represented by Muscovitch & Associates, Canada.

The Respondent is Jingeng Hong of the United Arab Emirates (“UAE”).

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

The disputed domain name <huawei.ae> is registered with AE Domain Administration (.aeDA).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 27, 2014. On July 28, 2014, the Center transmitted by email to AE Domain Administration (.aeDA) a request for registrar verification in connection with the disputed domain name. On July 31, 2014, AE Domain Administration (.aeDA) 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 UAE Domain Name Dispute Resolution Policy for – UAE DRP approved by .aeDA (the “Policy”), the Rules for UAE Domain Name Dispute Resolution Policy - UAE DRP (the “Rules”), and the Supplemental Rules for UAE Domain Name Dispute Resolution Policy - UAE DRP (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceeding commenced on August 6, 2014. In accordance with the Rules, paragraph 5(a), the due date for Response was August 26, 2014. The Center received several informal email communications from the Respondent on August 6 and 7, 2014. The Respondent did not file a formal Response.

The Center informed the parties on August 27, 2014, about the Commencement of the Panel appointment process. On August 27, 2014, the Complainant submitted unsolicited supplemental filings to the Center, and on August 28, 2014, the Respondent sent further unsolicited email communications to the Center.

The Center appointed Sebastian M.W. Hughes as panelist in this matter on September 2, 2014. 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.

On September 2, 2014, the Respondent sent a further unsolicited email communication to the Center.

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

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

The Complainant is a company incorporated in China and the owner of numerous registrations worldwide for the word and device trade mark HUAWEI (the "Trade Mark"), the earliest dating from 1997, including registrations in the UAE.

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

The Respondent is an individual located in the UAE.

##### **C. The Disputed Domain Name**

The disputed domain name was registered on November 13, 2013. It has not been used in connection with an active website.

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

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

The Complainant made the following submissions in the Complaint.

The Complainant is a global provider of information and communications technology under the Trade Mark. The Complainant employs over 150,000 people worldwide and its products are sold in 170 countries worldwide.

The disputed domain name was previously registered by one of the Complainant's subsidiaries, before its registration was inadvertently allowed to lapse in 2012.

The disputed domain name is confusingly similar to the Trade Mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not affiliated with or authorised by the Complainant. The Respondent is not using the disputed domain name in respect of a *bona fide* offering of goods or services. The Respondent is not commonly known by the disputed domain name.

The Respondent is a cybersquatter who has demonstrated a pattern of registering ".ae" domain names which correspond with the brand names of well-known Chinese companies, including <alipay.ae>, <cntv.ae>, <gfive.ae>, <ifeng.ae> and <youku.ae>.

The disputed domain name has been registered and used in bad faith. The Trade Mark is a well-known mark and, given the notoriety of the Trade Mark, the Respondent must have known of the Complainant and of the Trade Mark when it registered the disputed domain name.

In response to a letter of demand from the Complainant's representatives requesting transfer of the disputed domain name, the Respondent claimed to be in the business of "buying and selling domain names and network space, domain name investment, and creating websites", and refused to transfer the disputed domain name to the Complainant on the basis of "first come, first served". The Respondent also claimed "And we registered more domain names including but not limited to huawei.ae".

## **B. Respondent**

The Respondent did not file a formal Response, but asserted in its informal email communications that the disputed domain name had been legally registered, and that the Respondent had legitimate rights in the disputed domain name.

## **6. Discussion and Findings**

### **6.1 Supplemental Filings**

Panels have sole discretion, under paragraphs 10 and 12 of the Rules, whether to accept an unsolicited supplemental filing from either party, bearing in mind the need for procedural efficiency, and the obligation to treat each party with equality and ensure that each party has a fair opportunity to present its case. The party submitting its filing would normally need to show its relevance to the case and why it was unable to provide that information in the complaint or response.

As neither party has provided sufficient reasons to satisfy the above criteria, the Panel determines that it will not admit the supplemental filings in this proceeding.

### **6.2 Substantive Elements of the Policy**

The Complainant must prove each of the three elements in paragraph 6(a) of the Policy in order to prevail.

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

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration which predate the date of registration of the disputed domain name by many years.

Apart from the country-code Top Level Domain ".ae", the disputed domain name is identical to the Trade Mark.

The Panel therefore finds that the disputed domain name is identical to the Trade Mark and holds that the Complaint fulfils the first condition of paragraph 6(a) of the Policy.

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

Paragraph 6(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

- (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 organisation) has been commonly known by the domain name even if the respondent has 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.

There is no evidence that the Complainant has authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Complainant has prior rights in the Trade Mark which precede the Respondent's registration of the disputed domain name by many years. 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 disputed 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 disputed domain name or that the disputed domain name is used in connection with a *bona fide* offering of goods or services. The Respondent has adduced no evidence to show that the disputed domain name has been actively used.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name.

There has been no evidence adduced to show that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to establish rights or legitimate interests in the disputed domain name. The Panel therefore finds that the Complaint fulfils the second condition of paragraph 6(a) of the Policy.

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

Pursuant to paragraph 6(b)(ii) of the Policy, the following conduct amounts to registration or use of a domain name in bad faith on the part of a respondent:

- ii) You have 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 you have engaged in a pattern of such conduct.

The evidence clearly shows that the Respondent has engaged in a pattern of registering ".ae" domain names which are identical to the trade marks of several well-known Chinese companies. The Respondent has tacitly admitted this fact in its response to the Complainant's letter of demand. Furthermore, the Respondent has steadfastly refused to transfer the disputed domain name to the Complainant.

For the foregoing reasons, the Panel concludes that the disputed domain name has been registered or used in bad faith. Accordingly, the third condition of paragraph 6(a) of the Policy has been fulfilled.

### **7. Decision**

For the foregoing reasons, in accordance with paragraphs 6(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <huawei.ae> be transferred to the Complainant.

**Sebastian M. W. Hughes**

Sole Panelist

Dated: September 16, 2014