



# Asian Domain Name Dispute Resolution Centre

(Hong Kong Office)

## ADMINISTRATIVE PANEL DECISION

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<b>Case No.</b>	HK-1500756
<b>Complainant:</b>	Lenovo (Beijing) Ltd.
<b>Respondent:</b>	Pavol Icik
<b>Disputed Domain Name(s):</b>	<lenovoep.com>

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### **The Parties and Contested Domain Name**

1. The Complainant is Lenovo (Beijing) Ltd. of 6 Chuangye Road, Shangdi Information Industry Base, Haidian District, People's Republic of China.
2. The Respondent is Pavol Icik, of Namestie SNP 35, Bratislava, Slovak Republic.
3. The domain name at issue is <lenovoep.com>, registered by the Respondent with Hebei Guoji Maoyi (Shanghai) Ltd DBA HEBEIDOMAINS.COM, of Zhang Yang Rd 1589, Shanghai Pudong 200135 People's Republic of China.

### **Procedural History**

4. The Complainant filed this complaint with the Asian Domain Name Dispute Resolution Centre (ADNDRC) (Hong Kong Office) on 7 May 2015.
5. A copy of the Complaint together with a Slovak translation was forwarded to the Respondent on 7 May 2015. Concurrently, a copy was also sent to the Registrar of the disputed domain name.
6. The ADNDRC did not receive any response from the Respondent within 20 calendar days as required under paragraph 5 of the Rules for Domain Name Dispute Resolution Policy (the "Rules"). Accordingly, on 10 June 2015, the ADNDRC informed the parties that no response had been received and that it would shortly appoint a single panelist.
7. On 10 June 2014, the ADNDRC appointed David Allison as the sole Panelist in this matter. The Panelist accepted the appointment and has submitted a statement to the ADNDRC that he is able to act independently and impartially between the parties.

## **Factual background**

### **The Complainant's Background**

8. The Complainant was established in 1984 and is a wholly owned subsidiary of the Lenovo Group, a leading Chinese based, multinational computer technology company. In 2013, the Complainant became arguably the world's largest PC manufacturer with a turnover of around US\$34 billion.

9. The Complainant was formally known as Legend (Beijing) Ltd. In April 2004, the Complainant changed its company name to Lenovo (Beijing) Ltd. The Complainant claims that the word "Lenovo" was a newly created word which is derived from two elements, namely (a) "Le-" which originated from the Complainant's previous name and trademark "Legend" and (b) "-novo" which is a Latin suffix meaning "innovation".

10. Since as early as 2003, the Complaint has filed for an extensive collection of trademarks over the term "Lenovo" in China, Slovakia and worldwide. Relevantly, the earliest marks registered by the Complainant in both China and Slovakia are as follows:

#### **Earliest Marks registered in China**

	<b>Mark</b>	<b>Reg. No.</b>	<b>App. Date</b>	<b>Class</b>	<b>Reg. Date</b>
	LENOVO	3462586	2004-7-14	9	2004-7-14
	LENOVO	3368147	2004-3-13	9	2004-3-13

#### **Earliest Marks registered in Slovakia**

	<b>Mark</b>	<b>Reg. No.</b>	<b>App. Date</b>	<b>Class</b>	<b>Reg. Date</b>
	LENOVO	0030653 81	2003-2-24	9, 37, 42	2003-2-24
	LENOVO	0037077 46	2004-3-11	7,11, 16, 28, 35, 38, 39, 40, 41	2004-3-11

11. The Complainant has also registered the domain name [www.lenovo.com](http://www.lenovo.com) since 6 September 2002 and has maintained an active website on that domain ever since.

12. The evidence submitted by the Complainant suggests that the Complainant has become very successful and its name, Lenovo, has become very well recognized by consumers worldwide.

## **The Respondent's Background**

13. As the Respondent did not file any response to the Complaint, little is known about the background of the Respondent. However, according to the WHOIS search report of the disputed domain name, the Respondent appears to be an individual based in Slovakia.

14. The evidence does suggest however, that the Respondent is no stranger to domain name disputes, having been involved as a Respondent in several recent disputes (for example WIPO case No D2014-0474 in relation to <deltadentaloftn.com>, National Arbitration Forum claim no. FA1404001556047 in relation to <bluehomedepot.com>, WIPO case no D2014-1669 in relation to <lypsyl.com>) among others.

## **Parties' Contentions**

### **Complainant**

15. The Complainant's contentions may be summarized as follows:

- i. The disputed domain name is identical or confusingly similar to the trade name, trademarks and domain names of the Complainant.
- ii. The Respondent has no rights to the name "Lenovo".
- iii. Given the fact that "Lenovo" is a name coined by the Complainant and due to the long use and fame of the Lenovo name, The Respondent has registered the disputed domain name in bad faith.
- iv. Further, the many domain name dispute decisions which have found against the Respondent for cyber-squatting support the Complainant's contention that the Respondent has applied for the disputed domain name in bad faith.

### **Respondent**

16. The Respondent has filed no response to the Complainant's complaint.

## **Preliminary Issues**

### **Language**

17. In accordance with Rule 11 of the Rules, "*...unless otherwise agreed by the parties...the language of the ...proceedings shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceedings*".

18. On 18 May 2015, the Registrar of the disputed domain name confirmed to the ADNDRC that the language of the Registration Agreement is English. Accordingly, the English language is the language to be used for these proceedings.

## **Default decisions**

19. The ICANN Uniform Domain Name Dispute Resolution Policy ("UDRP") provides, at paragraph 4(a), that each of three following three elements must be satisfied in order for a Complainant to prevail:

- i. Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

20. Whilst the Respondent has not filed a response to this Complaint, this fact has not resulted in an automatic finding against the Respondent. Despite the Respondent's default, the Panel must still satisfy itself that the Complainant has established each of the three elements required by paragraph 4(a) of the UDRP. Accordingly, the Panel has considered whether each of the three requirements under paragraph 4(a) of the UDRP has been met. The Panel's findings are as follows:

## **Findings**

### **A) Identical / Confusingly Similar**

21. The disputed domain name consists of the elements "lenovoep" and ".com". It is a well-accepted principle that TLD suffixes such as ".com", ".net", etc are ignored for the purposes of comparison and thus the Panel has not considered this suffix when comparing the disputed domain name to the Complainant's prior rights.

22. The Complainant has adduced significant amounts of evidence to demonstrate that it has an extensive collection of trademarks over the mark "LENOVO", in China, Slovakia and worldwide. The earliest of these marks have registration dates back to February 2003.

23. The Complainant has also adduced a significant quantity of evidence showing its marks are well-known among the public, particularly in China, but also world-wide.

24. On the basis of the evidence adduced, the Panel finds that the Complainant clearly has rights over the trademark "LENOVO".

25. In comparing the disputed domain name with the Complainant's prior rights, whilst they are not identical, the Panel holds that the disputed domain name is confusingly similar to the Complainant's prior trademark rights.

26. In making this assessment, the Panel considered the visual, aural and conceptual similarities between the Complainant's prior trademark rights and the disputed domain name. The Panel also evaluated these criteria from the perspective of the average consumer.

27. In the Panel's view, the "lenovo" element of the disputed domain name is likely to be regarded by consumers as the dominant element. It is identical to the prior trademarks registered by the Complainant and it is placed at the beginning of the disputed domain name – where it is most prominent. When read aloud, the "lenovo" element would also be

emphasized. By contrast, the Panel holds that the "-epp" element of the disputed domain name would likely be largely ignored by consumers.

28. For the reasons noted above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's prior trademarks and therefore, element 1 of UDRP paragraph 4(a) has been satisfied.

### **B) Rights and Legitimate Interests**

29. Based on the evidence placed before the Panel, the Panel has found that the Respondent has no rights or legitimate interests in the disputed domain name.

30. This finding is based on the following:

- i. There has been no evidence submitted by the Respondent to show the reasons or justification for the choice of a domain name in which the element "lenovo" constitutes the dominant part of the domain name.
- ii. The website currently shown at the disputed domain name likewise, does not suggest in any way that the Respondent has any legitimate rights or interests in the disputed Domain name. In contrast, a footer has been placed on the website which reads "*The Sponsored Listings displayed above are served automatically by a third party. Neither the service provider nor the domain owner maintain any relationship with the advertisers. In case of trademark issues please contact the domain owner directly (contact information can be found in whois)*". This footer suggests that the Respondent has no active control/ use of the domain in any way, let alone for any legitimate interest.
- iii. In contrast, the Complainant has adduced extensive evidence to substantiate its claim that it is well known, both in China and world-wide, and has built up extensive rights and interest in the mark and name "LENOVO".

31. While the Panel notes that the overall burden of proving this element rests with the Complainant, it also recognizes the well-established principle that once the Complainant has established a *prima facie* case that the Respondent lacks sufficient legitimate rights and interests, the burden then shifts to the Respondent.

32. In this case, the Panel finds that the Complainant has adduced a sufficient *prima facie* case whereas the Respondent has failed to adduce any evidence whatsoever.

33. Accordingly, the Panel finds that the Complainant has established the second element of UDRP paragraph 4(a).

### **C) Bad Faith**

34. To establish bad faith, the Complainant may refer to the circumstances outlined in paragraph 4(b) of the UDRP. That paragraph sets out a series of circumstances that may be taken into account, namely:

- i. circumstances indicating that [the Respondent] has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of Respondent's documented out-of-pocket costs directly related to the disputed domain name; or
- ii. [the Respondent] has registered the disputed domain name in order to prevent Complainant from reflecting the mark in a corresponding domain name, provided that [Respondent] has engaged in a pattern of such conduct; or
- iii. [Respondent] has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. by using the disputed domain name, [the Respondent] has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location."

35. However, the circumstances outlined in paragraph 4(b) are not exhaustive and the Panel may take into account other circumstances which demonstrate bad faith.

36. One circumstance that may be taken into account is where the Respondent has been involved in multiple prior UDRP disputes which involve domain names that are similar to trademarks. Where the Respondent has been involved in multiple disputes, each with a finding of bad faith, this may indicate a pattern of conduct that the Panel may take into account.

37. Prior decisions make clear however, that such a pattern of conduct will not be found from a single prior example. Clearly, multiple relevant examples must be adduced in order to infer a pattern of bad faith behaviour.

38. In this case, the Complainant has adduced evidence of 10 prior UDRP disputes involving the Respondent. Each of the prior disputes involved disputed domain names that are the same or similar to other parties' trademark rights. In each case, bad faith was established.

39. The Panel's view is that these prior cases establish a clear pattern of conduct on the part of the Respondent indicating bad faith.

40. In addition, due to the demonstrated fame and reputation of the Complainant's name and mark (as evidenced by extensive trademark rights, formal recognition as being a well-known mark in China, extensive media coverage, etc), the Panel holds that it is highly unlikely that the Respondent would have had no knowledge of the Complainant or its rights prior to filing for the disputed domain name. To nevertheless file for the disputed domain name is regarded by the Panel as a clear indication of bad faith.

41. Considering the above, and having regard to all of the evidence submitted by the Complainant, the Panel finds that the third element of UDRP paragraph 4(a) has been made out and that the Respondent has registered the disputed domain name in bad faith.

**Decision**

42. For the reasons outlined above, the Panel finds that the Complainant has satisfied all three elements of UDRP paragraph 4(a). Accordingly, the Panel orders that the disputed domain name, <lenovoep.com>, be transferred to the Complainant



David Andrew Allison  
Sole Panelist

Dated: 24 June 2015