

ADMINISTRATIVE PANEL DECISION

Huawei Technologies Co., Ltd. v. Frank Makange
Case No. DTZ2017-0001

1. The Parties

The Complainant is Huawei Technologies Co., Ltd. of Shenzhen, China, represented by Muscovitch Law P.C., Canada.

The Respondent is Frank Makange of Osaka City, Japan.

2. The Domain Name and Registrar

The disputed domain name <huawei.co.tz> is registered with Extreme Web Technologies Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 24, 2017. On July 25, 2017, the Center transmitted by email to tzNIC a request for registrar verification in connection with the disputed domain name. On July 26, 2017, 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.

In response to a notification by the Center, the Complainant filed an amendment to the Complaint on July 31, 2017.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy for .TZ (the “Policy”), the Rules for Uniform Domain Name Dispute Resolution Policy for .TZ (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (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 proceedings commenced on August 3, 2017. In accordance with the Rules, paragraph 5(a), the due date for Response was August 23, 2017. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 28, 2017.

The Center appointed James A. Barker as the sole panelist in this matter on September 12, 2017. 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

Founded in 1987, the Complainant is one of the largest telecommunications equipment manufacturer in the world, and is a global provider of information and communications technology under the trademark, HUAWEI and other related brands. The Complainant's products are numerous, and include applications, software, networking, communications, infrastructure, and mobile devices. The Complainant says that its products are deployed in 170 countries, serving more than a third of the world's population, and the Complainant employs over 180,000 people worldwide. The Complainant is the world's third largest mobile phone handset manufacturer.

The Complainant is headquartered in Shenzhen, China, and maintains over 106 corporate offices throughout the world.

The Complaint is based upon the 279 registered trademarks for HUAWEI and HUAWEI & Design in 154 countries dating as far back as 1997, including in the United Republic of Tanzania and in Japan, evidence of which was attached to the Complaint. In addition to registered marks, the Complainant also claims common law trademark rights for HUAWEI, based on the substantial extent of its sales, distribution and advertising.

The Complainant mentions previous cases in which it has been a successful complainant in previous cases under the Uniform Domain Name Dispute Resolution Policy ("UDRP") and other country code Top-Level Domain ("ccTLD") dispute resolution policies, which recognized the fame of the Complainant's marks. These include, e.g., *Huawei Technologies Co. Ltd. v. Jingen Hong*, WIPO Case No. DAE2014-0004.

The disputed domain name was registered on November 17, 2014. There is no active website at the disputed domain name.

There is little information in the case file as to the identity of the Respondent. There is nothing in the name of the Respondent which, to the Panel, is suggestive of a particular type of business or other enterprise.

The Complainant points out that the named Respondent was previously determined by a prior panel to be a cybersquatter in the case of *Kentucky Fried Chicken International LLC v. Donmai Inc, Frank Makange*, WIPO Case No. DTZ2016-0001.

The Complainant also provides evidence that the Respondent is the registrant of several other domain names with the ".tz" ccTLD that incorporate well-known trademarks, including <iphone.co.tz>, <puma.co.tz>, <realator.co.tz> and <mazda.co.tz>.

5. Parties' Contentions

A. Complainant

The Complainant says that the disputed domain name is identical or confusingly similar to its HUAWEI trademarks. The disputed domain name includes that mark in its entirety. This is sufficient to establish identity or confusing similarity for the purposes of the Policy.

The Complainant says that the Respondent has no rights or legitimate interests in the disputed domain name. The disputed domain name is comprised exclusively of the Complainant's famous mark which is known and registered worldwide. The Respondent, as per the Whois details of the disputed domain name, and to the best of the Complainant's knowledge, is not known as "Huawei". The Respondent, has not been authorized or licensed to use the Complainant's trademarks in the disputed domain name. The Respondent is not an authorized distributor of any HUAWEI products or services. The Respondent is not using the

disputed domain name for any free speech purposes or for any other *bona fide* purposes whatsoever. The Respondent has not done anything with the disputed domain name other than squat on it and prevent the Complainant from reflecting its trademark.

The Complainant says that the disputed domain name has been registered and used in bad faith. Where, as in this case, the Respondent has failed to show rights or legitimate interests in the disputed domain name, registration and use in bad faith can commonly be inferred. The Respondent's bad faith can also be inferred from the Respondent's repeated failure to respond to all communications from the Complainant. The absence of any demonstrable plans to use the disputed domain name together with the absence of evidence of any actual use for a *bona fide* purpose is evidence of the Respondent's bad faith.

The Respondent registered a domain name that is exclusively comprised of the Complainant's HUAWEI mark in its entirety and even corresponds to its corporate name, which is the subject of extensive common law trademark rights and clearly confusing to the public. Given the substantial reputation of the Complainant who has its products deployed in 170 countries, serving more than a third of the world's population, and given that the Complainant employs over 180,000 people worldwide and has offices in 107 countries, with hundreds of registered trademarks worldwide, there is no doubt that the Respondent was well aware of the Complainant's trademark rights prior to its registration of the disputed domain name.

In addition, the Complainant says that the Respondent's registration of the disputed domain name is part of a pattern of bad faith registrations in violation of paragraph 4(b)(ii) of the Policy.

The Complainant sent the Respondent a 'cease and desist' letter in June 2017. The Complainant received no response.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must prove that:

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

These elements are discussed in turn below. In considering these elements, paragraph 15(a) of the Rules provides that the Panel shall decide the Complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the Panel deems applicable.

The Panel notes that the Policy is substantively similar to the Uniform Domain Name Dispute Resolution Policy. As such, the Panel has drawn on previous decisions under the UDRP to inform, as appropriate, its decision in this case.

A. Identical or Confusingly Similar

There are two elements of paragraph 4(a)(i) of the Policy which the Complainant must prove to succeed in this dispute.

The first is that the complainant “has rights” in a trademark or service mark. The Complainant has such rights in registered trademarks for HUAWEI in various jurisdictions, including in Tanzania (the country that corresponds to the ccTLD in this case) and in Japan (where the Respondent has his address). As mentioned above, the Complainant’s rights in its mark have been recognized in past cases under the UDRP and other domain name dispute resolution policies that are in similar terms to the Policy.

The second is that the Complainant must show that the disputed domain name is identical or confusingly similar to the mark in which it has rights. For the purpose of comparison, it is well-established that the ccTLD, in this case “.co.tz”, is not relevant as it is a necessary component of the disputed domain name. If that suffix is disregarded, only the term “Huawei” remains. This term is self-evidently identical to the Complainant’s HUAWEI trademark.

Accordingly, the Panel finds that the Complainant has proven the elements required in paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy then directs the Complainant to show that the Respondent has “no rights or legitimate interests” in the disputed domain name. In considering this element, previous cases under the Policy have applied the approach now summarized in section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”).

Under this approach, once a complainant makes a *prima facie* case that a respondent lacks rights or legitimate interests, the burden of production to show rights or legitimate interests in the disputed domain name shifts to the respondent. The Complainant has made a strong *prima facie* case against the Respondent, including by pointing to its substantial portfolio of registered marks for HUAWEI, and the worldwide extent and advertising of its business.

The Respondent in this proceeding has not come forward with any claim to rights or legitimate interests. Neither is there any evidence in the case file, or otherwise apparent to the Panel, that might suggest such rights or legitimate interests. Having regard to the Panel’s findings below in relation to bad faith, the Panel also considers that it is highly unlikely that the Respondent could plausibly demonstrate such rights or legitimate interests.

Accordingly, the Panel finds that the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The final element which the Complainant must demonstrate under paragraph 4(a)(iii) of the Policy is that the Respondent registered the disputed domain name, or has been using it, in bad faith.

Paragraph 4(b) of the Policy sets out a non-exclusive list of the types of circumstances that “shall be evidence of the registration and use of a domain name in bad faith”. Here, the Respondent has registered a domain name that is identical to the Complainant’s mark, made no response to all attempts to contact it in connection with this dispute, and seemingly made no use of the disputed domain name in connection with a website. The Complainant says that bad faith registration may be inferred from these circumstances alone.

The Panel agrees this contention, for the following reasons.

Firstly, the disputed domain name is identical to the Complainant’s mark.

Secondly, there is nothing in the case file that suggests that the Respondent might have rights or legitimate interests in the disputed domain name. The Respondent has not come forward to claim that it has any such rights or legitimate interests. The Panel infers from this that the Respondent, in fact, has no good reply to the case against him.

Thirdly, given the fame of the Complainant's mark, the Panel thinks is very unlikely that the Respondent was unaware of the Complainant's mark. While the derivation of the term "Huawei" was not explained in the Complaint, there is no evidence that it has some association other than with the Complainant's products. The Panel can think of no reason why the Respondent might have registered and used the disputed domain name (by at least, passively holding it).

Fourthly, and related to the third point, the Complainant's mark "is so obviously connected with such a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith." See *e.g. Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. D2000-0163.

Fifthly, the Respondent has concealed its identity and given false contact details. For example, the written notice of the Complaint, sent by the Center, was returned as having an incorrect address. Similar conduct in previous cases under the Policy has been found to be a contributing factor to a finding of bad faith. See *e.g. Fifth Third Bancorp v. Secure Whois Information Service*, WIPO Case No. D2006-0696. Such conduct is consistent with a pattern of evasion that may suggest that the Respondent has something to hide. As such, this is not conduct that would be expected from a party that had acted in good faith.

Sixthly, there is some evidence of the Respondent demonstrating a pattern of conduct in registering well-known trademarks in domain names, in bad faith. *Kentucky Fried Chicken International LLC v. Donmai Inc, Frank Makange*, WIPO Case No. DTZ2016-0001. The Complainant also points to evidence of the Respondent's apparent registration of well-known trademarks in domain names that are not the subject of this dispute. While each case must be considered on its own merits, this evidence at least suggests that the Respondent is aware of the potential of his activities to infringe on the rights of trademark owners. In *Kentucky Fried Chicken International LLC v. Donmai Inc, Frank Makange, supra*, the Respondent at least submitted a response, even though the Panel decided in the Complainant's favour. In accordance with paragraph 14(b) of the Rules, the Panel infers from the lack of a Response in this case that the Respondent thought he had even less of a case to argue.

Finally, the failure of the Respondent to reply to the Complainant's 'cease and desist' letter or to respond to the Complaint in this proceeding supports an inference of bad faith. See, *e.g., Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. D2002-0787. Such conduct may be defensible in cases where a respondent has a colorable defense to the proceedings against it. But this is not such a case. As such, the Respondent's failure to reply is further evidence of a consistent pattern of non-responsiveness and evasion, which is additionally suggestive of bad faith.

Accordingly, the Panel finds that the Complainant has established its case under paragraph 4(a)(iii) of the Policy.

7. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name, <huawei.co.tz>, be transferred to the Complainant.

James A. Barker

Sole Panelist

Date: October 4, 2017