

Domain Name Dispute Resolution Center (DNDRC)

Arbitration and Mediation Center

COMPLAINT PANEL DECISION

Case No. C2022-0005

Also in PDF C2022-0005

1. The Parties

The Complainant is Hostinger, UAB [“Hostinger.com”], having its office at Jonavos str. 60C, Kaunas LT-44192, Lithuania.

The Respondent’s name is Weimu Zheng with their address at nanzhou garden A8 yi 606, Guangzhou, China.

2. The Domain Names and Registrar

The domain name in dispute is <hostinger.pk>, hereinafter referred to as the Disputed Domain Name [“the DDN”]. Vide email dated Tuesday 29 March 2022, PKNIC has informed DNDRC that the Disputed Domain Name was registered by Weimu Zheng, with its address at nanzhou garden A8 yi 606, Guangzhou.

3. Procedural History

DNDRC was informed of the Complaint against the Respondent as per PKNIC - Internet Domain Registration Policy, by notification from the Complainant on 07 January 2022.

The Respondent was issued a notification of the dispute along with a copy of the Complaint and a Response Form on 31 March 2022 informing the Respondent that if a Response was not received 10 days from the notification, the dispute would be proceeded ex parte. The Respondent was also issued a reminder notification on 4 April 2022. The Respondent failed to provide a response within the stipulated time period.

Applying Paragraph 4(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the *Rules*), DNDRC appointed Mr. Raja Abubakar as the sole Arbitrator who has verified that the Complaint satisfies the formal requirements of the Policy and the Rules.

Factual Background

The domain name upon which the Complaint is based is <hostinger.pk>.

PKNIC has confirmed via their email dated 29 March 2022 that the DDN was registered by the Respondent above-named and that the email address provided at the time of registration is 289308694@qq.com.

4. Parties Contentions

A. Complainant

The Complainant's brief contentions are reproduced below:

Complainant Hostinger, UAB (previously been called II "HOSTING MEDIA") have registered first trademark for Hostinger in WIPO in year 2011 in countries: LV, LU, LT, BX, GB, HR, RO, HU, FR, BG, BE, DE, FI, DK, IE, CZ, AT, CY, US, SE, AU, SI, SK, IT, MT, PT, PL, UA, EM, GR, ES, NL, EE, CN class 42. (Reg. number 1079958), later complainant has registered trademark in USA for class 42 (Reg. number 5855966), Europe for class 9 and 42 (Reg. number 18198410), Brazil for classes 9, 42 and 38, and other countries. Complainant has been actively doing business under this name since 2002. Complainant is using Hostinger name actively all over the world from 2002, when company have registered hostinger.com domain. Till know complainant have registered domains hostinger.It, hostinger.pl, hostinger.ee, hostinger.com.ar, hostinger.com.br and many more. Hostinger logotype is also protected by trademark .

Therefore, the Complainant seeks the following remedies:

- To cancel the Domain Name; and
- To transfer the Domain's registration from the said owners to the Complainant.

B. Respondent

The Complaint was duly served to the Respondent, but the Respondent did not submit any

response. Under section 5(e) of the UDRP, in the absence of a response, the Panel has the authority to commence the proceedings in default and to determine the matter based upon the Complaint. Therefore, the Panel proceeded with the matter ex-parte.

5. Jurisdiction

The Panel's jurisdiction over this dispute between the Complainant and the Respondent is established by virtue of the Internet Domain Registration Policy version 4.4 (2019-08-19) and the Rules.

The Respondent applied for and was granted registration of the DDN on the basis of these regulations, and has submitted to, the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19) and the Rules and correspondingly to the arbitral jurisdiction of the DNDRC and its arbitration decisions.

6. Discussion and Findings

In the landmark case of *Standard Chartered PLC v. Hosting Campus Domain* (case no. C2007-0001) available on the DNDRC website (http://www.dndrc.com/cases_resolved/pdf/c2007-0001.pdf), the Panel laid down the following four heads under which to analyze cases, under the Internet Domain Registration Policy version 4.4 (2019-08-19) and the UDRP:

1. *Illegality, unlawfulness or otherwise invalidity of the Application & Registration (a criteria in terms of the PKNIC - Internet Domain Registration Policy June 20, 2006, version 4.1 in addition to the criteria of the UDRP)*
2. *Identical or confusing similarity to a trademark or service mark in which the Complainant has rights (a UDRP criteria)*
3. *Legitimate interest in Domain Name (a UDRP criteria)*
4. *Registration and use in bad faith (a UDRP criteria)*

The decision of the dispute shall be addressed with respect to the following aspects:

- i. *Illegality, unlawfulness or otherwise invalidity with respect to the Application & Registration (a PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19) criteria).*
- ii. *Identical or confusing similarity with a trademark or service in which the Complainant has rights (a UDRP criteria).*
- iii. *Legitimate interest in the domain name (a UDRP criteria).*

- iv. Registration and use of the domain name in bad faith (a UDRP criteria).

I. Illegality, unlawfulness or otherwise invalidity of the Application & Registration

The PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19) states that it creates an exception for, and thus excludes the registration of a domain name that:

- a. *infringes upon a registered tradename,*
- b. *is not bona fide as recognized by international best practice,*
- c. *in the opinion of PKNIC, a contravention of the latest version of the Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/ Anti-Terrorism Act, 1997/any applicable criminal law,*
- d. *has been declared by a Criminal Court of appropriate jurisdiction to have contravened the latest version of Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/Anti-Terrorism Act, 1997/any applicable criminal law), or*
- e. *in the opinion of PKNIC is not appropriate for registration.*

As per the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19),

If a party claims that a domain name already registered with PKNIC violates their registered tradename, an obvious derivation of their registered company name is not bona fide as recognized by international best practice, and is a contravention in the opinion of PKNIC to be a contravention of the latest version of the Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/ Anti-Terrorism Act, 1997/any applicable criminal law, PKNIC reserves the right to cancel, or transfer the domain to the claiming party as per the ICANN's Uniform Domain Name Dispute Resolution Policy [UDRP] (with PKNIC amendments) or as per the orders of a court judgment in Pakistan.

Therefore, for the purpose of assessing illegality, unlawfulness or otherwise invalidity of the Application & Registration of the Disputed Domain Name, the application and registration of the DDN shall be assessed in consideration of the following criteria:

- i. Whether the DDN infringes upon a registered trade name / trade mark?
- ii. Whether the application and/or registration of the DDN is bona fide?
- iii. Whether the application and/or registration of the DDN contravenes the Pakistan Penal Code, 1860 (the "Penal Code") or any applicable criminal law?

The Complainant has stated:

The Complainant submits that the application and registration of the Disputed Domain Name with PKNIC is illegal, unlawful, or otherwise invalid at least on the basis that (a) the Disputed Domain Name infringes upon a registered trade mark and (b) the application and registration of the Disputed Domain Name is not bona fide.

For (a), the Disputed Domain Name incorporates the word "HOSTINGER" which is the registered trade mark of the Complainant. Details and evidence of the Complainant's trade mark registrations around the world are provided in the following section under Ground (ii).

For (b), the Complainant has been using "HOSTINGER" for Web hosting services since 2011 and has registered its marks in various countries around the world, well before the registration of the Disputed Domain Name. It is obvious that the Respondent had knowledge of the Complainant's rights at the time of registration of the Disputed Domain Name. The fact that the Disputed Domain Name redirects Internet users to the website operated by another Web hosting service provider which is one of the Complainant's competitors also shows the Respondent's attempt to disrupt the business of the Complainant and that the Respondent has not registered and is not using the Disputed Domain Name in good faith. Details and evidence proving the Respondent's bad faith in the application and registration of the Disputed Domain Name are provided in the later part of this Complaint under Ground (iv).

The Respondent has not provided a substantive response to the Complainant's contention.

The Complainant has provided copies of certificates of registration indicating that it has registered the word mark "HOSTINGER" in several classes in different countries. The Panel finds that the Complainant has submitted sufficient evidence that it has trademark rights in the word "HOSTINGER". The DDN does prima facie incorporate in its entirety the registered trademark of the Complainant. In the view of the Panel, the DDN therefore infringes upon the trademark of the Complainant. [Proof and or documentations in favor of the Complainant]

In the absence of any information provided by the Respondent, the Panel is unable to infer whether the Respondent also has rights to the term "HOSTINGER" that would indicate that the registration of the DDN by the Respondent was bona fide.

In view of the findings of the Panel that the DDN, which incorporates a registered trademark of the Complainant in its entirety, constitutes an infringement of the trademark of the Complainant in its entirety, the Panel, relying on the findings in *Standard Chartered PLC v. Hosting Campus Domain* (case no. C2007-0001), also finds that the registration will contravene relevant provisions of the Pakistan Penal Code.

The Panel therefore finds that the registration of the Disputed Domain Name is unlawful. The Panel may decide this Complaint on this basis alone. However, for the sake of completeness and procedural fairness, but not to create a binding precedent, this Panel shall also assess the Complaint in terms of the ICANN UDRP as amended by the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19).

II. Identical or confusing similarity to a trademark or service mark in which the Complainant has rights

The Complainant has contended the following:

The above shows that the Complainant has rights and interests in the HOSTINGER Marks. The Complainant submits that for the purpose of considering whether the Disputed Domain Name is identical or confusingly similar to the HOSTINGER Marks, the generic country-code top-level domain ".pk" element of the Disputed Domain Name should be disregarded as it is non-descriptive and merely instrumental to the use of the Disputed Domain Name on the internet, see Telecom Personal, S.A., v Namezero.com, Inc, WIPO Case No. D2001-0015 and also Rohde & Schwarz GmbH & Co. KG v. Pertshire Marketing Ltd, WIPO Case No. D2006-0762.

Furthermore, while the Complainant has a number of registrations for "HOSTINGER" as a plain word mark, the Complainant also owns other combination marks. When considering whether the Disputed Domain Name is identical or confusingly similar to such combination marks, the graphic elements should not be considered, as they are incapable of being reproduced in a domain name, see EFG Bank European Financial Group SA v. Jacob Foundation, WIPO Case No. D2000-0036 and also Hero v. The Heroic Sandwich, WIPO Case No. D2008-0779.

The Complainant submits that the second-level portion of the Disputed Domain Name, "HOSTINGER" is the identifying element of the domain name, which consists of the word "HOSTINGER" alone and is identical to the Complainant's HOSTINGER Marks. Further,

the Complainant submits that the Disputed Domain Name is identical to the Complainant's Domain Name of its official website <www.hostinger.com>.

Further, according to trade mark principles, the likelihood of confusion must be appreciated globally, taking into account all relevant circumstances. A lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods or services. Also, the more distinctive an earlier mark, the greater the likelihood of confusion will be. As already submitted, the Disputed Domain Name is identical to the Complainant's HOSTINGER Marks. Further, the connection to the Complainant's services is evidenced by the redirection of the Disputed Domain Name to <https://www.bluehost.com/?utm_source=%28direct%29&utm_medium=affiliate&utm_campaign=affiliate-link_vpshosting_notype> which is owned by Bluehost, Inc, a competitor of the Complainant providing similar Web hosting services.

It is an established principle that the incorporation of a Complainant's trademark in full within a disputed domain name may be sufficient to establish confusing similarity between the mark and the disputed domain name.

The Complainant has provided sufficient information, including annexing evidence of the same, that the Complainant has rights in the trademark "HOSTINGER" in several countries. The addition of the ccTLD ".pk" would also not prevent the finding of confusing similarity.

The Respondent has not submitted any contention. In the absence of any valid explanation of how the DDN is not confusingly similar to the trademark of the Complainant, the Panel finds confusing similarity between the DDN and the Complainant's trademark under paragraph 4(a)(i) of the Policy.

III. Legitimate interests in a domain name

As per paragraph 4(c), the UDRP requires the Respondent's claim to be of legitimate interest and shall be:

"proved based on all evidence presented" that "shall demonstrate" the Respondent's "rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii)."

Paragraph 4(a)(ii) states that:

“(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The Complainant has contended:

None of the circumstances set out in Paragraph 4 (c) of the Policy can be satisfied by the Respondent and the Respondent has no rights or legitimate interests in the Disputed Domain Name.

Paragraph 4 of the (i) of the Policy is not satisfied

The Respondent is not able to show that before notice to it of the dispute it has used or prepared to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services. This is because the Disputed Domain Name was registered on 15 August 2017, which is later than many of the registrations of the Complainant's HOSTINGER Marks. The Respondent would have been well aware of the Complainant as a result of the Complainant's registration and extensive use of its HOSTINGER Marks for Web hosting services and the Complainant's registration of the domain name since November 2002.

It is also evident that the Respondent was aware of the Complainant at the time the Disputed Domain Name was registered due to the incorporation of the word "HOSTINGER" in the Disputed Domain Name which is a distinctive and non-descriptive trade mark for Web hosting services.

It is clear that the Respondent has registered and used the Disputed Domain Name with the intent to divert internet users to the Complainant's competitor's website. The adoption and use of a domain name that is identical to the Complainant's Domain Name was clearly done to confuse consumers who are looking for the Complainant's services and to attract

consumers to the Disputed Domain Name and diverting them to the Complainant's competitor's website. As a result, this cannot conceivably constitute a bona fide offering of goods or services, see item *Industrietechnik GmbH v. Kevin Caulfield*, WIPO Case No. D2015-0725.

Paragraph 4(c)(~) of the Policy is not satisfied

So far as can be ascertained, the Complainant is not aware of any other Web hosting providers which own any registered trademarks that correspond to "HOSTINGER" or conducts business in this sector using a business or trade name incorporating "HOSTINGER". Therefore, the Respondent does not have any rights or legitimate interests to "HOSTINGER".

*There exists no relationship between the Complainant and the Respondent (so far as can be ascertained) that would give rise to any license, permission, or authorization by which the Respondent could own or use the Disputed Domain Name which incorporates the Complainant's HOSTINGER Marks. Under the circumstances, the Respondent cannot show legitimate rights or interests in the disputed domain name, see *Serta, Inc. v. Maximum Investment Corporation*, WIPO D2000-0123.*

Paragraph 4 of the(ii) of the Policy is not satisfied

It is clear that the Respondent cannot rely on paragraph 4(c)(iii) of the Policy as it is not making a legitimate noncommercial or fair use of the domain name. Rather, the Respondent is using the Disputed Domain Name with intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark at issue.

The Complainant submits that the Respondent should have been well aware of the Complainant's rights in the HOSTINGER Marks at the time the Disputed Domain Name was registered, which was after the date of first use and registration of many of the HOSTINGER Marks and the registration of the Complainant's domain name.

In view of the adoption of the identical word "HOSTINGER", it is implausible that the Disputed Domain Name was selected by the Respondent for any other reason than for commercial gain through misleadingly diverting consumers which are trying to seek the Complainant's services to the Disputed Domain Name. This is particularly so as the website, which the Disputed Domain Name is diverting internet users to, is related to similar Web hosting services provided by Bluehost Inc, one of the Complainant's competitors in the same sector. The Complainant in fact contacted Bluehost Inc by sending

an abuse report and stated that the redirection of the Disputed Domain Name to Bluehost Inc's website infringes the Complainant's trade mark rights. Bluehost Inc replied that they were not the registrant of the Disputed Domain Name. The issue remains unsolved at the time of filing of this Complaint.

Given the above, the Respondent does not satisfy paragraph 4(c)(iii) of the policy. See also The British Broadcasting Corporation v Jaime Renteria, WIPO Case NO. D2000-0050.

The Respondent has failed to respond, and resultantly satisfy the Panel that the Respondent is commonly known by the name of “hostinger.pk” or has any legitimate interest in the DDN.

As has been previously adopted by the discussions and findings in WIPO authorities, it is for the Respondent to rebut the allegations put forth by the Complainant after the Complainant establishes a prima facie case about the lack of legitimate interest in a disputed domain name. Also, with respect to proving rights or legitimate interests in the disputed domain name(s), it is for the Respondent to submit evidence pertaining to the same as it would be extremely difficult, if not impossible, for the Complainant to prove a negative assertion. As such, in order to satisfy the Panel that it has rights or legitimate interests to the DDN, the Respondent was obliged to respond and submit evidence with respect to the same.

The Complainant has indicated that it is in use of the name “HOSTINGER” and has registered trademarks, demonstrating a prima facie case of legitimate interest in the DDN. The Panel notes that the DDN does not resolve to a website that uses the name “HOSTINGER”, instead resolving to a third-party website, and there is no indication that the Respondent has been known by or is in use of the DDN.

In the absence of any information provided by the Respondent in support of his legitimate interest in the DDN, the Panel finds that the Respondent does not have rights to or a legitimate interest in the DDN pursuant to paragraph 4(a)(ii) of the Policy.

IV. Registration and use in bad faith

The Complainant has made the following submission:

Given the reputation of the Complainant, it is inconceivable for the Respondent to have never heard about the Complainant's HOSTINGER Marks when it registered the confusingly similar Disputed Domain Name. The very fact that the Respondent registered the Disputed Domain

Name which exactly incorporates the Complainant's HOSTINGER Marks while having notice of the Complainant's registered marks amounts to bad faith.

Further, the fact that the Disputed Domain Name redirects Internet users to the website of one of the Complainant's competitors namely Bluehost Inc. clearly supports the Respondent's intentional attempt to disrupt the Complainant's business, as well as possibly to attract, for commercial gain, Internet users to another online location, by creating a likelihood of confusion with the Complainant's HOSTINGER Marks as to the source, sponsorship, affiliation, or endorsement of the website of Bluehost Inc., see Ansell Healthcare Products Inc. v Australian Therapeutics Supplies Pty, Ltd., WIPO Case No. D2001-0110 and also Long Realty Uptown v. Domains By Proxy, LLC I Lloyd Fox, WIPO Case No. D2015- 2076.

The Respondent has failed to submit a response.

The Panel finds that the HOSTINGER mark of the Complainant had considerable popularity and was well-known for the period that the Respondent has been using the mark. The Respondent did not provide any submission that it was not aware about the Complainant or its business at the time of registration of the DDN. The Panel, therefore, in the absence of any submission to the contrary by the Respondent, finds that the DDN was registered and is being used in bad faith by the Respondent.

7. Decision

Analyzing the details provided by the Complainant, the Panel perceives that the HOSTINGER mark has been registered by the Complainant, hence the Complainant reserves crucial interest in such mark. Usage of these marks by the Respondent could endanger the reputation that the Complainant has worked hard at building and maintaining and result in confusion as to the registrant of the Disputed Domain Name.

Taking all the discussion above into consideration, the Panel concludes and decides that:

1. The Complainant's registration of the DDN is contrary to the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19)
2. The Respondent has no legitimate interest in the DDN.
3. The DDN is identical to the Complainant's trademark/names and registered domain names.
4. The DDN was registered and being used in bad faith.

Pursuant to Section 4 of the Policy, the Panel, therefore, recommends that PKNIC cancel the registration of the domain name in dispute <hostinger.pk>, as prayed, within 48 hours of receipt of this decision either by email or through the website where it will be uploaded, www.dndrc.com/cases_resolved/, whichever is earlier. The Complainant shall also be at liberty to contact PKNIC for implementation of this decision.

Arbitrator: Raja Abubakar

Sole Panelist

Date: 30 May 2022