



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2201662
First Complainant:	JOHN SWIRE & SONS LIMITED
Second Complainant:	SWIRE PACIFIC LIMITED
Respondent:	ZhuJiang
Disputed Domain Name:	<swireglobal.com>

1. The Parties and Contested Domain Name

The First Complainant is John Swire & Sons Limited, of Swire House, 59 Buckingham Gate, London SW1E 6AJ, United Kingdom.

The Second Complainant is Swire Pacific Limited, of 33/F, One Pacific Place, 88 Queensway, Hong Kong SAR, China.

The Complainants' Authorised Representative is Deacons, of 5/F, Alexandra House, 18 Chater Road, Central, Hong Kong.

The Respondent is ZhuJiang, of ASiDunFaSiDiFen, WuHanShi, HuBei, PRC.

The domain name at issue ("Disputed Domain Name") is <swireglobal.com>, registered by Respondent with 22NET, INC., whose email address is abuse@22.cn.

2. Procedural History

On 9 September 2022, the Complainants submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center ("Center"), pursuant to the Uniform Domain Name Dispute Resolution Policy ("Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on 26 August 1999, the Rules for Uniform Domain Name Dispute Resolution Policy, approved by ICANN Board of directors on 28 September 2013 ("Rules"), and the Asian Domain Name Dispute Resolution Centre Supplemental Rules to the Internet Corporation for Assigned Names and Numbers (ICANN) Uniform Domain Name Dispute Resolution Policy and the Rules for the Uniform Domain Name Dispute Resolution Policy ("Supplemental Rules"). The Center confirmed receipt of the Complaint on 13 September 2022. The Complainants elected that a single panelist decide this case.

On 13 September 2022, the Center transmitted by email to the Registrar, 22NET, INC., a request for registrar verification of the disputed domain name.

On 13 September 2022, the Registrar transmitted by email to the Center its verification response, confirming that the Respondent is listed as the Registrant and providing contact details as: telephone and fax +86.19871335255 and email 19871335255@139.com.

On 13 September 2022, the Center notified the Complainants by email that the Complaint, as originally submitted, did not name the Respondent as the Registrant. On 13 September 2022, the Complainants submitted timely, in accordance with paragraph 4 (b) of the Rules, an Amended Complaint (“Complaint”), with exhibits.

On 19 September 2022, the Center transmitted the Complaint and evidence to the Respondent by email to the Respondent’s registered email addresses, requesting that the Respondent submit a Response within 20 calendar days, further specifying the due date as being on or before 9 October 2022.

Since the Respondent defaulted and did not mention the panel selection in accordance with the time specified in the Rules, the Supplemental Rules, and the Notification, the Center informed the Complainants and the Respondent by email on 10 October 2022, that the Center would appoint a single-member panel to proceed to render the decision.

On 10 October 2022, having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the Center notified the parties that the Panel in this case had been selected, with Mr. David L. Kreider, Chartered Arbitrator (UK), acting as the sole panelist.

The Panel determines that the appointment was made in accordance with Rule 6 and Articles 8 and 9 of the Supplemental Rules. In accordance with the Rules, subject to exceptional circumstances, a decision for the captioned domain name dispute shall be rendered by the Panelist on or before 24 October 2022.

Preliminary Issue – Language of the Proceedings

On 16 September 2022, the Complainants submitted their request that, notwithstanding that the relevant Registration Agreement is in Chinese, these administrative proceedings should be conducted in English.

Pursuant to UDRP Rule 11(a), the Panel finds that persuasive evidence has been adduced by the Complainants to suggest the likely possibility that the Respondent is conversant and proficient in the English language. After considering the circumstances of the present case, the Panel decides that these proceedings should be conducted in English.

3. Factual background

The First Complainant, JOHN SWIRE & SONS LIMITED, is the indirect parent company of SWIRE PACIFIC LIMITED and its other group companies (hereinafter collectively, the “Complainants” or “Swire”). The First Complainant is the owner of the relevant “SWIRE” trade marks (the “Mark(s)”), registered worldwide and in Hong Kong and the mainland of China.

The Second Complainant, SWIRE PACIFIC LIMITED, is a publicly listed company established in Hong Kong in 1940 and a licensee of the Marks.

Swire is a part of the well-known global conglomerate “Swire Group” which has been operating for over 200 years. At present, the Swire Group has operations across a wide range of businesses including retail, property, food and beverage, aviation, hospitality, marine services, investment holdings, and trading and industrial areas. Swire has used and is using the Marks and brand in connection with its retail and wholesale services (including those online) of various types of goods (including but not limited to electrical and mechanical products, clothing, footwear, headgear and sporting articles, general consumer goods, as well as food and beverage) in multiple ways. They include, without limitation, applying the same in its own company name and through its international website www.swire.com (the domain of which was registered on 15 September 1995), and www.swirepacific.com (the domain of which was registered on 19 June 1996), (collectively, the “Swire Websites”).

The Respondent, ZhuJiang, did not submit a response timely, or at all. A WHOIS search shows the Disputed Domain Name was registered on 30 June 2022. As noted above, the Registrar has identified the Respondent as the Registrant of the Disputed Domain Name.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

i) The disputed domain name(s) is/are identical or confusingly similar to a trademark or service mark in which the Complainant has rights:

The combination of the “SWIRE” Mark along with the generic term “global” would be highly likely to confuse the public that the Disputed Domain Name is related or associated with the business and services of Swire, and in particular, the global international business and services provided by Swire. The gTLD “.com” should be disregarded for purposes of determining identity or confusing similarity to the Mark.

ii) The Respondent has no rights or legitimate interests in respect of the domain name:

The Respondent is not affiliated or associated with or related to the Complainants or the Complainants’ business in any way. The Complainants have not authorized, licensed, or otherwise permitted the Respondent to register the Disputed Domain Name or otherwise use the Marks.

Given that the details of the Respondent are redacted and are unknown to the general public, there is no available evidence showing that the Respondent has been commonly known by the Disputed Domain Name or that the Respondent has any rights in a trade mark or service mark identical to the Disputed Domain Name. The Complainants are also not aware of any evidence showing that the Respondent has any rights or legitimate interests in the Disputed Domain Name.

iii) The disputed domain name has been registered and is being used in bad faith:

For over 150 years, Swire has used its Marks in connection with their various fields of business, including but not limited to retail and wholesale services. Swire has achieved a solid reputation through use of its Marks worldwide.

Given the Complainants' extensive reputation, the Respondent must have been aware of the existence of the Complainants and the Marks, particularly as "Swire" is not a common English word. No reasonable justification could be offered for the Respondent to register the Disputed Domain Name, which wholly incorporates the word "Swire". Therefore, the registration of the Disputed Domain Name in and of itself constitutes bad faith on the part of the Respondent.

Further, the Disputed Domain Name resolves to an active website www.swireglobal.com ("Website"). On the Website, the Respondent has also, without Swire's authorization and consent, used Swire's name and Marks to operate an online e-commerce shopping platform called "Global Mall/环球商城" which allows third-party merchants to offer, provide, supply, sell, promote, market and/or otherwise deal in or with products from third parties, including but not limited to digital/ electronic goods, clothing and bags, food and beverage, cosmetics and skincare products, jewellery and watches, outdoor and sports equipment, automobile-related products, toys and musical instruments, and maternal and infant supplies. The Website offers goods and services which compete with Swire's extensive network of shopping malls, retail and wholesale stores and outlets selling, amongst others, footwear, apparel and related accessories worldwide, including but not limited to in the mainland of China, Hong Kong and Macau, via the Second Complainant's subsidiary Swire Resources Limited.

The Respondent's Website depicts the Swire Logos at the tab of every webpage. There can be no explanation at all for this depiction of the Swire Logos except to mislead the public into believing that the Disputed Domain Name and/or the Infringing Website are those of and/or operated by Swire.

Swire has received enquiries from members of the public showing the confusion that is generated by the Disputed Domain Name and the Infringing Website.

Against the above background, it is apparent, the Claimants aver, that the Respondent registered the Disputed Domain Name in bad faith and that the Respondent has used, and will continue to use, the Disputed Domain Name to mislead, defraud and/or otherwise harm the Complainants and members of the public.

B. Respondent

The Respondent's contentions may be summarized as follows:

As noted above, the Respondent, ZhuJiang, did not submit a response and has not sought to refute the Complainants' allegations or evidence.

5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made 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.

A) Identical / Confusingly Similar

The Complainants have adduced evidence demonstrating their registered rights in the SWIRE trademark.

The SWIRE trademark is incorporated in its entirety in the Disputed Domain Name.

The test to determine "identity or confusing similarity", the first element of the three findings required to be proved by a complainant under the Policy, is explained at paragraph 1.7 of the *WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition* ("WIPO Overview 3.0"):

"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.

This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. (This may also include recognizability by technological means such as search engine algorithms.) In some cases, such assessment may also entail a more holistic aural or phonetic comparison of the complainant's trademark and the disputed domain name to ascertain confusing similarity".

Thus, proof of actual confusion on the part of public internet users need not be alleged or proven for a complainant to succeed in establishing the first element of the Policy. Rather, the Panel need only compare the Disputed Domain Name "side-by-side" with the Mark, in making its determination.

WIPO Overview 3.0, paragraph 1.7 clarifies:

"While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing".

In the present case, the Complainants' "SWIRE" Mark is incorporated in its entirety in the Disputed Domain Name and is the "dominant feature". Moreover, the addition of the generic word "global", does not distinguish or differentiate the Disputed Domain Name. To the contrary, in the Panel's view, the addition of "global" serves to enhance the likelihood of actual confusion, in view of the fame and reputation of the Marks worldwide.

Accordingly, the Panel finds that the addition of the term "global" to the Complainants' "SWIRE" Mark does not prevent a finding of confusing similarity between the Disputed Domain Names and the Complainants' registered Marks.

The Complainants have satisfied the first element at paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

The Complainants allege that the Respondent is not affiliated or associated with or related to the Complainants or the Complainants' business in any way and that the Complainants have not authorized, licensed, or otherwise permitted the Respondent to register the Disputed Domain Name or otherwise use the Marks. The Complainants have, thus, established, prima facie, that the Respondent has no rights or legitimate interests in or to the Disputed Domain Name.

The Respondent, having defaulted and failed to challenge or rebut the Complainants' case, the Panel is entitled to accept the Complainants' prima facie case as conclusive of the second Policy element. In the present case, however, the Complainants' actual proof of the Respondent's registration and use of the Disputed Domain Name in bad faith, negating any possible claim of "a legitimate non-commercial or fair use" of the domain name, under Policy paragraph 4(c)(iii), is compelling.

The Complainants' evidence shows that Swire Group operates an extensive network of retail and wholesale shopping malls, stores and outlets of a wide range of products, including but not limited to sports and lifestyle footwear, apparel and related accessories, in the mainland of China, Hong Kong and Macau, among other global markets.

The Panel notes that the Website to which the Disputed Domain Name resolves displays the Complainants' registered "SWIRE" Logo on every webpage along with the words "Global mall" and depictions of clothing, accessories, electronics, computers, cosmetics, food and beverages, and merchandise of every variety.

The Complainants' have submitted proof in the form of enquiries by public internet users demonstrating actual confusion as to whether the Disputed Domain Name "belongs to the [S]wire group, or it's a scam", and "whether your company has a retail business or not" or the Company name is being used "to impersonate you to open a shop" on the Website?

The Panel finds that the Respondent's use of the Disputed Domain Name reflects a clear intent to misleadingly divert consumers, to tarnish the Complainants' Marks, or to impersonate or compete with the Complainants for commercial gain, and that the Respondent's actions negate any legitimate interests or possible claim of "fair use" of the domain name.

The second element at paragraph 4(a)(ii) of the Policy is satisfied.

C) Bad Faith

For the reasons and on the evidence discussed above, the Panel finds that the Respondent registered and is using the Dispute Domain Name in bad faith within the meaning and purview of Policy paragraph 4(b)(iv) by seeking intentionally to attract, for commercial gain, internet users to the Website; by creating a likelihood of confusion, resulting in actual confusion, with the Complainants' Marks as to the source, sponsorship, affiliation, or endorsement of the Website; and has sought in bad faith to target and impersonate the

Complainants and to mislead and “free ride” on the Complainants’ substantial business reputation and goodwill.

Accordingly, the Panel finds that the third element at paragraph 4(a)(iii) of the Policy is satisfied.

6. Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

It is ORDERED that the <swireglobal.com> domain name be **TRANSFERRED** from the Respondent to the Second Complainant, SWIRE PACIFIC LIMITED.



David L. Kreider, Panelist

Dated: 17 October 2022