

SINGAPORE DOMAIN NAME DISPUTE RESOLUTION SERVICE

Administrative Panel Decision

Case No. SDRP-2009/0002(F)

Disputed Domain Name - "unilever.com.sg"

1 The Parties

- 1.1 The Complainant is Unilever PLC, a company incorporated in the United Kingdom and having its place of business at Port Sunlight, Wirral, Merseyside L62 4ZA, England.
- 1.2 The Respondent is Fuzhou Zhongsikong Network Service Co., Ltd, a company registered under the laws of China and having its place of business at Dongshengjiekun Xiaoqu 7-605 Fujian, China, CN 35007.

2 The Domain Name and Registrar

- 2.1 The domain name in issue is "unilever.com.sg" ("the Domain Name").
- 2.2 The Registrar of the Domain Name is Web Commerce Communications (Singapore) Pte Ltd, a company incorporated in Singapore of 67 Tanjong Pagar Road, Singapore 088488, an accredited registrar authorised by Singapore Network Information Centre (SGNIC) Pte Ltd ("SGNIC") of 8 Temasek Boulevard, #14-00 Suntec Tower Three, Singapore 038988.

3 Procedural History

- 3.1 The Complainant submitted this complaint ("the Complaint") pursuant to the Singapore Domain Name Dispute Resolution Policy ("the Policy") and the Rules for the Singapore Domain Name Dispute Resolution Policy ("the Rules").
- 3.2 The Secretariat for the Singapore Domain Name Dispute Resolution Service ("the Secretariat") received the Complaint on 13 February 2009.
- 3.3 The Respondent has not submitted a Response, the deadline for which expired on 12 March 2009.
- 3.4 The Secretariat notified both the Complainant and the Respondent (collectively "the Parties") on 19 March 2009, of the appointment of Dr. Stanley Lai as the sole Panellist on the Administrative Panel ("the Panel") to decide the dispute between the Parties over the Domain Name. The Panel was in receipt of the Complaint with supporting documents on 20 March 2009.
- 3.5 On 20 March 2009, the Secretariat issued a confirmation to parties confirming that the Respondent did not submit a formal Response to the Complaint by 5.00pm on 12 March 2009. The Secretariat's confirmation was provided in response to an email from the Complainant's representative dated 20 March 2009, which also requested

that the Secretariat confirm that the Panel shall be deciding this dispute on the basis of the Complaint filed herein. In its letter to parties, the Secretariat quite correctly pointed out that it is not appropriate for it to comment on how the Panel will decide the dispute.

3.6 As a preliminary point, the Panel's approach in such a case must be that if no Response is received, it is not in a position to summarily resolve the registration of the dispute domain name in favour of the complainant without a proper adjudication of the merits of the Complaint. This approach has been adopted by panellists in other SDRP decisions: *Samsung Electronics Co. Ltd v Funexpress.com.sg Pte Ltd* (SDRP - 2002-0004(F)); *Laswer-Technology (Singapore) Private Limited v E3 Management Services* (now known as "E3 Business Solutions") (SDRP-2006/0001(L); *Sony Ericsson Mobile Communications AB et al v Zheng Zhongxing* (SDRP - 2008/0001(F)); *McDonald's Corporation v Website Development* (SDRP - 2008/003(F)); *McDonald's Corporation v "This Domain For Sale"* (SDRP - 2008/0002(F)).

3.7 After assessing the merits of the Complaint, the Panel may then proceed to consider if the dispute should be decided based upon the complaint, as provided for under section 5(f) of the Rules. Section 5(f) Rules provides:

"If the Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint."

3.8 Accordingly, section 5(f) provides that in the event that no Response is filed with the Secretariat, it is still incumbent on the Panel to consider the merits of the complaint, and at the same time, consider whether there are exceptional circumstances that may prevent a decision of the dispute based upon the complaint.

3.9 On the basis that no further clarifications were sought of the Complainant or any other party, the Panel proceeds with the adjudication the domain name dispute as follows.

4 Factual Background and the Complainant's Claim to Rights

4.1 The Complaint states that:

4.1.1 The Complainant is the rightful proprietor of the name "UNILEVER" for a wide range of goods and services. The Complainant and its related companies own the registration of the "UNILEVER" name and trade marks in Singapore in Classes 1, 3, 5, 7, 9, 10, 1116, 21, 29, 30, 31, 32, 35, 36, 37, 38, 40, 41, 42, 43 and 44.

4.1.2 The Complainant and its related companies own more than 150 trade mark registrations or pending applications in no less than 45 countries for its "UNILEVER" name and trade mark.

4.1.3 The Complainant or its related companies own many domain names containing the "UNILEVER" name and trade mark including but not limited to unilever.com, unilever.sg, unilever.com.my, unilever.my and unilever.com.cn .

4.1.4 The Complainant and its related companies have used the “UNILEVER” name and trade mark since 1930 in relation to the product and services offered by the Complainant and its related companies.

4.1.5 It has consistently enjoyed huge sales turnover of its products and an indication of the Complainant’s sales turnover in recent years in recent years is as follows:

Year	Turnover (US\$) million
2004	46 013
2005	47 771
2006	49 711
2007	54 815

4.1.6 The Complainant and its related companies have also aggressively advertised and promoted its goods and services through various advertising campaigns and in various media. An indication of the services incurred by the Complainant in the advertising and promoting products and services sold under and by reference to the “UNILEVER” name and trade mark is as follows:

Year	Advertising and promotions (US\$) million
2004	5 404
2005	6 118
2006	6 525
2007	7 214

4.1.7 Its “UNILEVER” name and trade mark is well recognised internationally and qualifies as a well known trade mark in Singapore. Further, the Complainant and its related companies enjoy valuable and substantial goodwill in the “UNILEVER” name and trade mark.

5 Complainant’s Contentions

5.1 The Complainant contends that:

5.1.1 The Domain Name is confusingly similar to the many “unilever” domain names belonging to the Complainant and its related companies.

5.1.2 The Domain Name is identical or confusingly similar to the “UNILEVER” name and trade mark in which the Complainant and its related company has earlier and valuable rights.

5.1.3 The Respondent has no rights or legitimate interests in respect of the Domain Name.

5.1.4 The Domain Name has been registered or is being used in bad faith.

6 The Respondent

6.1 The Respondent did not file or submit any response within the period required under Paragraph 5(a) of the Rules.

7 The Basis for the Complaint

7.1 The Complaint is based on paragraph 4 of the Policy.

7.2 The Panel shall proceed to evaluate the Complaint based on each of the afore-stated grounds.

7.3 If the Complainant provides that each of the three elements of section 4(a) is present, it shall be entitled to the remedies set out in paragraph 4(i) of the Rules (cancellation of Registrant's domain name or transfer of the Registrant's domain name registration to the Complainant). By paragraph 43 of the Complaint the Complainant has opted for the transfer of the domain name "unilever.com.sg".

8 Paragraph 4a of the Policy

8.1 Under paragraph 4(a) of the Policy, the Complainant must prove that it satisfies the trinity of conditions to be entitled to the remedy under paragraph 4(i) of the Policy of a transfer of a domain name, which is what the Complainant has requested for in its Complaint.

(i) *The registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;*

(ii) *The registrant has no rights or legitimate interests in respect of the domain name; and*

(iii) *The registrant's domain name has been registered or is being used in bad faith.*

First Condition

8.2 The Complainant must establish that -

8.2.1 they have rights to the name or mark "UNILEVER"; and

8.2.2 that the Domain Name is identical or confusingly similar to "UNILEVER".

8.3 The Panel is satisfied that the Complainant has satisfied the Panel that it has rights in the name or mark "UNILEVER", under paragraph 4a(i) of the Policy. The following reasons support this finding:-

- 8.3.1 the matter as set out in paragraph 4 above and the trade mark registrations in Singapore for the mark “UNILEVER” owned by the Complainant and its related companies (Annex B to the Complaint);
- 8.3.2 the unchallenged statement that the Complainant and its related companies own more than 150 trademark registrations or pending applications in no less than 45 countries around the world for the UNILEVER name and trade mark (para 14 Complaint);
- 8.3.3 The unchallenged statement that the Complainant and its related companies have used the UNILEVER name and trade mark since 1930 following the merger of two companies, Margarine Unie of the Netherlands and Lever Brothers of the United Kingdom. The name “unilever” is a combination of the two names and is an invented word with no particular meaning in the English Dictionary. The Complainant is therefore the first user and rightful owner of the UNILEVER name and trade mark (para 16 Complaint);
- 8.3.4 The unchallenged submission that such rights pre-date the creation of the Domain Name on 29 November 2008, as exhibited in Annex A to the Complaint (or the WHOIS report on the Domain Name);
- 8.3.5 The extensive worldwide recognition of as well as its reputation and goodwill attached to the business and products of the Complainant under the “UNILEVER” name. The Complainant submitted Financial Reports showing details of significant advertising spend apropos the promotion of products and services by reference to the UNILEVER name and trade mark (para 18 Complaint, Annex D).
- 8.4 For completeness it should be stated that whilst the Complainant has protected the trade mark UNILEVER with a distinctive ‘U’ device in multiple classes and jurisdictions, it has also acquired independent rights to the UNILEVER name simpliciter. The latter is particularly relevant to the assessment of rights in this dispute.
- 8.5 As to whether the Domain Name is identical or confusingly similar to the name or mark “UNILEVER” over which the Complainant has rights as aforementioned, the Panel observes that it is obvious that the Domain Name is identical with the name over which the Complainant has rights as found above. Several other observations may be made. It has been generally accepted that the addition of the portion “.com” (or “.com.sg” in this case) is to be ignored and the comparison is to be with the characterising part of the domain name, which in this case is that of “UNILEVER” :*Sony Ericsson Mobile Communications AB & ords v. Zheng Zongxing Case No. SDRP 2008/0001(F)*). The Panel was asked to disregard the ‘U’ device mark that is used in the Complainant’s trade marks, when comparing them with the Domain Name. There is a legal basis for saying that the public is more likely to remember the name UNILEVER than the as the trade mark, as opposed to “UNILEVER and U device” (*Bluestar Exchange (Singapore) Pte Ltd v. Teoh Keng Long & others (trading as Polykwan Trading Company [2003] SGHC 169)*).

- 8.6 It should also be noted that in the recent High Court case of *Louis Vuitton v. City Chain Stores (S) Pte Ltd and Another Matter* [2009] SGHC 24, it was held that the matter of whether two marks are identical is to be considered from the perspective of the average consumer. A sign will be identical with the registered mark where it reproduces, without any modification or addition, all the elements constituting the mark or when viewed as whole it contains differences so insignificant they may go unnoticed by the average consumer (at para 69). These principles can similarly traverse the current adjudication.
- 8.7 Applying the above, the Panel is of the view that the Domain Name and the Complainant's trade marks are identical as the Complainant has reproduced the name "UNILEVER" and incorporated it into the Domain Name, with little modification or addition.
- 8.8 In the alternative, the Complainant also has a basis for saying the Domain Name confusingly similar to the many UNILEVER names and trade marks in which the Complainant has rights.
- 8.9 The Panel is therefore of the view that the Complainant has satisfied the requirements of Paragraph 4a(i) of the Policy that the Domain Name is identical or confusingly similar to a name or trade mark in which the Complainant has rights.

Second Condition

- 8.10 Under the second requirement, the Complainant must establish that the Respondent has no rights or legitimate interests in the Domain Name. Pursuant to paragraph 4c of the Policy, the following in particular but without limitation, which if proved, shall demonstrate the Respondent's rights to or legitimate interests in the Domain Name for purposes of this second condition:
- 8.10.1 before any notice to the Registrant of the dispute, the Registrant'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;
 - 8.10.2 the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
 - 8.10.3 the Registrant is making a legitimate non-commercial 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.
- 8.11 The preliminary observation may also be made of the second condition, that if a Respondent to an SDRP adjudication does not submit a response to the Complaint, the Panel is entitled to draw an adverse inference from the failure to do so, and find, in particular, that the Respondent is unable to establish any rights or legitimate interests in the Domain Name.
- 8.12 The adverse inference may be negated by any bona fide use that is made of the Domain Name and the content of any website.

- 8.13 The Panel has perused the various web pages located at and/or linked by the Domain Name. The Panel has noted that the website appears to be used for the purposes of 'domain name parking' as it is stated on the main page that the website is available for sale. The Panel further observed that there are links or tabs titled "Ponds", "Dove", "Omo", "Hazeline" and "Lux" on the website, which do not pertain to any products or services in particular but instead lead to pages that are similar to the main web page located at the Domain Name. The Panel notes the Complainant's assertion that "Ponds", "Dove", "Omo", "Hazeline" and "Lux" are brand names and trade marks which belong to the Complainant and its related companies and there has been no consent or authorisation by them for the use of these brand names by the Respondent. (Annex F to the Complaint)
- 8.14 Accordingly, the Panel concludes that the above usage of the Domain Name by the Respondent cannot in the circumstances constitute the bona fide offering of goods or services by the Respondent and the website contains mischievous references to known trade marks and products of the Complainant (PONDS, DOVE, OMO, HAZELINE and LUX). The Panel makes the finding that in the absence of any satisfactory explanation or claim to legitimate use of the Domain Name, the Respondent's current use of the Domain will potentially mislead internet users into thinking that the Respondent's website is associated with or otherwise connected to the Complainant.
- 8.15 Based on the evidence submitted by the Complainant, the Panel does not find any legitimate non-commercial use or fair use of the Domain Name, The evidence appears to show that the Domain Name is being used for the sale of the Domain Name/website (a clear commercial objective).
- 8.16 The requirements under the second condition as stated in Paragraph 4a of the Policy have been satisfied and that the Respondent has no rights or legitimate interests in respect of the Domain Name.

Third Condition

- 8.17 The third condition of Paragraph 4a of the Policy requires the Complainant to prove that the Respondent's Domain Name has been registered or is being used in bad faith. Paragraph 4(b) of the Policy further states that the following circumstances in particular, but if found by the to be present, shall be evidence of the registration and use of a domain name in bad faith:
- 8.17.1 circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name;
- 8.17.2 the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct;
- 8.17.3 the Registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

- 8.17.4 by using the domain name, the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.
- 8.18 The Complainant asserts in the Complaint that the web pages of the Domain Name bear the hallmarks of having been generated by a domain name parking service. The title bar of the webpage states "Unilever.com.sg - Career Resources and Information - This Domain is for sale!". As alluded to above, the web page also features links to several "Related searches" including "Ponds", "Dove", "Omo", "Hazeline" and "Lux".
- 8.19 A visit to the web page at the Domain Name reveals that the bottom of the webpage contains the following statement:
- "This page provided to the domain owner **free** by Sedo's Domain Parking . Disclaimer: Domain owner and Sedo maintain no relationship with third party advertisers. Reference to any specific service or trade mark is not controlled by Sedo or domain owner and does not constitute or imply its association, endorsement or recommendation."*
- 8.20 The web page also contains, under a heading "Buy This Domain", the statement "The Domain unilever.com.sg may be for sale by its owner!"
- 8.21 In view of the above, and the failure by the Respondent to provide any explanation or rebuttal, the Panel agrees with the Complainant's assertion that the Complainant had registered or acquired the Domain Name primarily for the purpose of selling it. This is evidence of bad faith, as referred to in paragraph 4(b)(i) of the Policy. In itself, this finding is sufficient to satisfy the Third Condition.
- 8.22 In absence of a response from the Respondent, the Panel relies and places significance on the following submissions from the Complainant on the issue of bad faith:
- 8.22.1 The registration of the Domain Name, which contains the Complainant's UNILEVER name and trade mark is a misrepresentation to the public that the Respondent is associated with the Complainant when no such association exists. The registration of the Domain Name would likely cause erosion to the Complainant's reputation and goodwill in the UNILEVER name and trade mark in a way which would likely cause damage to the Complainant (*British Telecommunications plc & ors v. One in a Million Ltd & ors* [1999] FSR 1).
- 8.22.2 The use by the Respondent of the Complainant's UNILEVER name and other trade marks on the Domain Name, could not be described in objective terms as an honest practice. Consequently the registration and use of the Domain Name by the Respondent must necessarily amount to bad faith (*Tesco Stores Limited v. Elogicom Limited & Robert Ray* [2006] EWHC 403 (Ch)).
- 8.22.3 The Respondent's choice of the Domain Name, which bears a name that is identical or confusingly similar with the "UNILEVER" name and trade mark of

the Complainant is contrary and in breach of the SGNIC Registration Policies, Procedures and Guidelines (“SGNIC RPPG”) to which the Respondent is bound. Under paragraph 7.4 of the SGNIC RPPG, the Respondent by registering the Domain Name makes a representation that neither the registration of the Domain Name nor the manner in which it is directly or indirectly used infringes the rights of a third party.

- 8.23 The Panel believes that the name “UNILEVER” denotes the Complainant and its associated companies and nobody else as anybody seeing or hearing the name “UNILEVER” is likely to perceive that what is being referred to is the business of the Complainant. As such, the registration of the Domain Name by the Respondent amounts to a false representation which constitutes passing off.
- 8.24 The Panel finds that there has been a breach of paragraph 7.4 of the SGNIC RPPG as it is evident from the web page parked at the Domain Name, that the Respondent is familiar with the Complainant’s brand and related trade marks.
- 8.25 Accordingly, the Panel finds that the registration and use of the Domain Name by the Respondent is in bad faith and that the condition under paragraph 4a(iii) of the Policy has been duly satisfied.

9 Conclusion

The Complainant has established to the Panel’s satisfaction, the three requirements under paragraph 4a of the Policy and the Panel concludes that the Complainant is therefore entitled to the remedy of the transfer of the Domain Name as provided under the Policy and the Rules.

Dr Stanley Lai
Allen & Gledhill LLP
Sole Panellist
2 April 2009