



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1500815
Complainant:	Halfbrick Studios Pty Ltd
Respondent:	Leigh Tarasenko
Disputed Domain Name:	<jetpackjoyride.com>

1. The Parties and Contested Domain Name

The Complainant is Halfbrick Studios Pty Ltd (“the Complainant”) of 190 Kelvin Grove Road, Kelvin Grove, Queensland, 4059, Australia, represented internally.

The Respondent is Leigh Tarasenko (“the Respondent”) of Unit 7, 3B Warrigal Road, Hughesdale, Victoria, 3166, Australia, self-represented.

The disputed domain name is <**jetpackjoyride.com**>, registered with Netregistry Pty Ltd, Level 4, 1 Smail Street, Ultimo, Sydney, New South Wales, 2007, Australia (“the Registrar”).

2. Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Center (the “Center”) on 26 November, 2015. On 30 November, 2015, the Center transmitted by email to the Registrar a request for registrar verification in connection with the domain name at issue. That same day 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. The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules of Procedure under the Policy (the “Rules”), and the Center’s Supplemental Rules.

In accordance with the Rules, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on 1 December, 2015. In accordance with the Rules, the due date for Response was 21 December, 2015. A formal Response was received by the Center that day.

The Center appointed Debrett G. Lyons as panelist in this matter on 30 December, 2015. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

3. Factual background

A. For Complainant

1. The Complainant is an Australian company which sells electronic gaming software by reference to the trademark **Jetpack Joyride**.
2. The Complainant is the owner of Australian trade mark registration number 1443353 for that trademark registered as from 22 August 2011.
3. The Complainant is also the owner of United States Patent & Trademark Office (“USPTO”) trademark registration number 4,172,986, registered from 10 July 2012 for that trademark.
4. That USPTO registration shows a first use in commerce date of 30 September 2011.
5. The Complainant has not licensed or otherwise permitted the Respondent to use the trademark or to register or use any domain name incorporating the trademark.
6. The Complainant petitions the Panel to order transfer the disputed domain name from the Respondent to the Complainant.

B. For Respondent

7. The Respondent registered the disputed domain name on 7 April 2011.
8. The disputed domain name resolves to rudimentary website where the content has recently been changed in consequence of these proceedings.
9. There is no evidence of use of the domain name in relation to the actual sale of goods prior to notice of this dispute.

4. Parties’ Contentions

A. Complainant

The Complainant asserts rights in the trademark **Jetpack Joyride** and states that the disputed domain name is identical to the trademark.

The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant alleges that the Respondent registered and used the disputed domain name in bad faith.

B. Respondent

The Respondent admits that the domain name is identical to the trademark.

Respondent claims that it has rights in the domain name and that it has not acted in bad faith for that reason that in 2009 it commenced development of an electronic game which features a main player being an astronaut on a jetpack. In April 2011 it registered the disputed domain name for use in connection therewith.

The Respondent submits that that it was not until August 2011 that the Complainant adopted the same name for its game, a game already on the market and already known by another name, 'Machine Gun Jetpack'.

The Respondent states that before receiving notice of this dispute, it was preparing to use the domain name for its game.

5. Findings

Paragraph 4(a) of the Policy states that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name be identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- 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

Paragraph 4(a)(i) of the Policy requires a two-fold enquiry – a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to the trademark.

Paragraph 4(a)(i) of the Policy does not distinguish between registered and unregistered trade mark rights. It is accepted that a trade mark registered with a national authority is evidence of trade mark rights for the purposes of the Policy. The Panel finds that the Complainant has trade mark rights in **Jetpack Joyride** acquired through registration.

For the purposes of comparing the trademark with the disputed domain name, it has long been held that generic top-level domains, such as “.com” in this case, can be ignored. The terms are then identical.

Panel finds the disputed domain name to be legally identical to the trademark and so finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

The Complainant has the burden to establish that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well-settled that the Complainant need only make out a *prima facie* case, after which the onus shifts to

the Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests.

Paragraph 4(c) of the Policy states that any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate rights or legitimate interests to a domain name for purposes of paragraph 4(a)(ii) of the Policy:

“(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 publicly available WhoIs database identifies the registrant as “Leigh Tarasenko” and so does not support any conclusion that the Respondent might be commonly known by the disputed domain name. There is no evidence that the Respondent has trademark rights in the disputed domain name, registered or not.

There is no evidence that the disputed domain name has ever been used in connection with a *bona fide* offering of goods or services. Further, there is correspondence indication that the domain name has been for sale.

The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name and so the onus shifts to the Respondent to show a right or legitimate interest in the name.

The Response does little more than assert the Respondent’s future intentions. There is no supporting evidence of any kind. There is nothing in terms of paragraph 4(c)(i) of the Policy to show “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” prior to notice of the dispute.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and so the Complainant has satisfied the second element of the Policy.

C) Bad Faith

Policy ¶ 4(b) sets out the circumstances which shall be evidence of the registration and use of a domain name in bad faith. They are:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the

domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out of pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

Panel finds that there is no compelling argument from the Complainant for the application of any of the above provisions. Panel notes, for example, the Complainant's submission (relevant to paragraph 4(b)(i) above) that the Respondent has engaged in price negotiation to sell the domain name to the Complainant but the email trail is not complete. It would seem that the parties have been aware of each other for some time prior to the filing of these Administrative Proceedings and that the offer to sell the domain name for reasonable compensation only came from the Respondent in reaction to earlier letters of demand.

Further, there is no evidence before Panel that the Respondent registered the domain name in bad faith. On the evidence the domain name was registered before the filing of any trademark application by the Complainant and before any use of the name by the Complainant.

The USPTO requires for the purposes of trademark registration that an applicant disclose the first use in commerce date. That date is months after the domain name was registered. Moreover, Panel's own enquiries point to a first release date of a game by the name corresponding with the trademark on 1 September 2011, again some time after the registration date of the domain name (see https://en.wikipedia.org/wiki/Jetpack_Joyride).

There is no evidence of a press release or other prior publication of the impending new game and so nothing on which to found any inference that the Respondent knew of the trademark and acted opportunistically.

The Panel finds that the Complainant has failed to show that the Respondent registered the disputed domain name in bad faith and so finds that the Complainant has not established the third limb of the Policy.

6. Decision

Having failed to establish one of the three elements required under the Policy, the Panel decides that relief shall be **DENIED**.

A handwritten signature in black ink, reading "Debrett G. Lyons". The signature is written in a cursive style with a large initial 'D'.

Debrett G. Lyons

Panelist

Dated: 11 January 2016