



Asian Domain Name Dispute Resolution Centre

beijing

ADMINISTRATIVE PANEL DECISION

Case No. CN-2301595

Complainant 1: Chengdu VERTU Business and Service Management Co., Ltd.

Complainant 2: VERTU GLOBAL PTE. LTD.

Respondent: vertu

Domain Name: vertuofficialindia.com

Registrar: Hosting Concepts B.V. d/b/a Registrar.eu

1. Procedural History

On 8 December 2023, the Complainant 1 and Complainant 2 (“Complainants”) submitted a Complaint in Chinese to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the ADNDRC Beijing Office) and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) and the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules) approved by the ADNDRC.

On 12 December 2023, the ADNDRC Beijing Office sent to the Complainants by email an acknowledgement of the receipt of the Complaint and transmitted by email to ICANN and the Registrar, Hosting Concepts B.V. d/b/a Registrar.eu, a request for registrar verification in connection with the disputed domain name.

On 29 December 2023, the Registrar transmitted by email to the ADNDRC Beijing Office its verification response, confirming that the domain name holder and providing the contact details. The Registrar further pointed out that the language of the Registration Agreement is English. On the same day, the ADNDRC Beijing Office informed the Complainants of the Respondent’s information and language issue, and requested the Complainants to revise the Complaint according to the registrar confirmation information.

On 30 January 2024, the Complainants submitted the revised Complaint to the ADNDRC Beijing Office.

On 31 January 2024, the ADNDRC notified the Complainants that the Complaint has been confirmed and transmitted to the Respondent and the case officially commenced. On the same day, the ADNDRC Beijing Office transmitted the Written Notice of the Complaint to the Respondent, which informed that the Complainants had filed a Complaint against the disputed domain name and the ADNDRC Beijing Office had sent the Complaint and its attachments through email according to the Rules and the Supplemental Rules. On the same day, the ADNDRC Beijing Office notified ICANN and Registrar, Hosting Concepts B.V. d/b/a Registrar.eu, of the commencement of the proceedings.

The Respondent failed to submit a Response within the specified time period. The ADNDRC Beijing Office notified the Respondent's default on 21 February 2024. Since the Respondent did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC Beijing Office informed the Complainants and the Respondent that the ADNDRC Beijing Office would appoint a one-person panel to proceed to render the decision.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Ms. Xue Hong, the ADNDRC Beijing Office notified the parties on 21 February 2024 that the Panel in this case had been selected, with Ms. Xue Hong acting as the sole panelist. The Panel determines that the appointment was made in accordance with Paragraph 6 of the Rules and Articles 8 and 9 of the Supplemental Rules.

On 21 February 2024, the Panel received the file from the ADNDRC Beijing Office and should render the Decision within 14 days, i.e., on or before 6 March 2024.

On 22 February 2024, the Panel granted the Parties a 3-day extraordinary period of time to submit supplementary evidence and the ADNDRC Beijing Office transmitted the Written Notice to both Parties.

On 26 February 2024, the Complainants submitted the supplementary evidence. The Respondent failed to submit any supplementary evidence within the specified time period.

On 28 February 2024, the ADNDRC Beijing Office transmitted to the Respondent the Complainants' supplementary evidence. The Respondent failed to submit any response on the Complainants' supplementary evidence within the specified time period.

Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of

the administrative proceeding. The Panel determines English the language of the proceedings, which is the language of the Registration Agreement of the disputed domain name.

2. Factual Background

A. The Complainants

The Complainant 1 in this case is Chengdu VERTU Business and Service Management Co., Ltd., with the registered address of 1601, 16th Floor, No. 1577 Middle Section of Tianfu Avenue, Chengdu High-tech Zone, China (Sichuan) Pilot Free Trade Zone Chengdu.

The Complainant 2 in this case is VERTU GLOBAL PTE. LTD., with the registered address of 30 Cecilstreet, #19-08 Prudential Tower, Singapore (049712). Both Complainants' authorized representative in this case is Wang Xuecheng from Beijing Wanhuida (Chongqing) Law Firm.

B. The Respondent

The Respondent in this case is vertu. The registered address is "A marol industry 203, 400072, Mumbai, Maharashtra, India". The Respondent has no authorized representative in this case.

The Respondent is the current registrant of the disputed domain name "vertuofficialindia.com", which was registered on 9 February 2022 according to the WHOIS information. The Registrar of the disputed domain name is Hosting Concepts B.V. d/b/a Registrar.eu.

3. Parties' Contentions

A. The Complainants

"VERTU" trademarks were originally owned entirely by the Complainant 1. For operation and trademark management purposes, the Complainant 1 decided to transfer the "VERTU" trademarks to its affiliated company, namely the Complainant 2. At present, some of the "VERTU" trademarks have been successfully transferred, while applications for the transfer of the remaining trademarks have been submitted to China National Intellectual Property Administration and are currently under review.

The "VERTU" trademarks that are still under the name of the Complainant 1 and have not yet been transferred:

Trademark	Trademark No.	Date of application	Commodity items
VERTU	13517937	November 11, 2013	Mobile phones; etc.

VERTU 纬图	49076245	August 20, 2020	Smartphones; etc.
VERTU 纬图	55074270	April 9, 2021	Smartphones; etc.
VERTU	58624662	August 20, 2021	Smartphones; etc.

The “VERTU” trademarks that have been transferred to Complainant 2:

Trademark	Trademark No.	Date of application	Commodity items
VERTU	G1242942	April 16, 2015	Portable telephone; video telephone; mobile phone; smart phone, etc.

As the trademark registration certificate for Trademark No. 13517937 was lost, the trademark file was retrieved from China National Intellectual Property Administration. Trademarks No. 49076245, 55074270, and 58624662 are still under registration review; therefore, information has been excerpted from the trademark office’s website. Trademark No. G1242942 was designated for registration in China through the Madrid Protocol, and information has been excerpted from the trademark office’s website.

1. VERTU brand profile

Founded in the United Kingdom in 1998, VERTU is the world’s first luxury mobile phone brand. In 2002, the world’s first luxury mobile phone, VERTU SIGNATURE, designed by the renowned mobile phone designer Frank Nuovo (Global Chief Designer of Nokia), was introduced. This marked the establishment of the luxury mobile phone as a new category and, to this day, VERTU remains the market leader.

Since the debut of the first VERTU phone in 2002, VERTU has successively launched over ten luxurious and classic products. Among them, the VERTU SIGNATURE phone received the prestigious Red Dot Design Award, one of the top awards in the design industry, in 2009 (the Red Dot Design Award is the largest and most influential design competition in the world, and is collectively referred to as the three major design awards in the world along with the German “IF Design Award” and the US “International Design Excellence Awards”). In 2014, VERTU announced a five-year partnership with Bentley, and the two international brands subsequently launched multiple classic products, continuing VERTU’s commitment to delivering extraordinary experiences to users.

2. Information on the sales of the “VERTU” brand

Since opening its first store in China in 2007, the Complainants and their agents have successively established over forty physical stores across various provinces and cities in China. The stores are in many Chinese cities.

In addition to physical stores, “VERTU” products are also sold through the flagship

stores on JD.com (established in 2017) and Tmall (established in 2019). Leveraging the extensive coverage of online platforms, this allows consumers in a broader geographical range to be exposed to and aware of the “VERTU” brand.

The photos of the store information and VERTU product pages for the JD.com flagship store and Tmall flagship store are showed.

3. Information on the marketing of the “VERTU” brand

To enhance and expand the brand awareness of “VERTU”, the Complainants have invested significant human resources, materials, and financial resources in their extensive promotion. This includes activities such as self-media, online advertising, touring exhibitions, press conferences, and other events.

Self-media: Continuous promotion and advertising of the “VERTU” brand through the official website, official WeChat account, official Weibo account, and WeChat mini-program.

Offline events: The Complainants also conduct promotional activities such as roadshows, charity auctions, press conferences, etc., to introduce and promote the “VERTU” brand.

Third-party media promotion: The “VERTU” brand has attracted considerable attention from numerous third-party media outlets, leading to continuous and extensive coverage.

In summary, the “VERTU” brand has garnered attention and admiration from the public due to its high-quality products and comprehensive premium services. Moreover, combined with the Complainants’ sustained and ongoing promotional efforts, the VERTU brand has acquired a high degree of recognition and influence, establishing a stable and exclusive association with the Complainants.

The disputed domain name “vertuofficialindia.com” was registered on 9 February, 2022. As mentioned above, well before its registration, the Complainants’ “VERTU” brand had already gained significant recognition. The Registrant of the disputed domain name should reasonably have been aware of its existence. In this context, the Registrant not only failed to exercise reasonable restraint but chose to register a domain name with “VERTU” as the primary identifying part. Moreover, the disputed domain name “vertuofficialindia.com” is easily recognizable and comprehensible, leading the relevant public to mistakenly believe it is owned by the Complainants. This action cannot be considered legitimate. The registration of this domain name has not only infringed upon the Complainants’ legal rights and interests, including trademark rights, but also misled the public, causing harm to their interests.

(1) The disputed domain name(s) is/are identical or confusingly similar to a trademark or service mark in which the Complainants have rights;

(i). The Complainants own the trademark “VERTU”, and this trademark is a coined word that is highly original and distinctive;

(ii) The Complainants’ VERTU trademark, through continuous promotional efforts, has achieved high recognition and influence, making it well-known to the relevant public;

(iii) The main identifying part “VERTU” of the disputed domain name “vertuofficialindia.com” is identical to the Complainants’ previously registered VERTU trademark. When searching the key word “VERTU”, which is the main identifying part of the disputed domain name, all searching results consistently and directly lead to the Complainants and its VERTU brand. In the case where the disputed domain name is highly recognizable and comprehensible, with an overall meaning of “VERTU India Official”, and considering the significant, well-known, and influential nature of the “VERTU” brand, the malicious registration of the disputed domain name by the Respondent is highly likely to cause confusion among the relevant public. This confusion may lead them to believe that the disputed domain name is registered by the Complainants, and such confusion is inevitable.

(2) The Respondent has no rights or legitimate interests in respect of the domain name(s);

The Respondent does not own the exclusive rights to use the trademark “VERTU”. According to the searches on the website of the Trademark Office of China National Intellectual Property Administration;

The Complainants have never authorized or granted permission to the Respondent to use the VERTU trademarks, let alone authorized the Respondent to register the disputed domain name;

(3) The disputed domain name has been registered and is being used in bad faith.

In a situation where the Respondent does not hold exclusive rights to the VERTU trademark and the domain name “vertu.com” has been registered by the Complainants, the Respondent has deliberately chosen to register the “vertuofficialindia.com” domain name with VERTU as the main identifying part. This choice allows them to avoid obstacles in registering a domain name with the same prefix and achieve the deceptive purpose. “vertuofficialindia.com” is easily readable and understandable, and likely to mislead the relevant public. Therefore, the registration is clearly in bad faith;

The Respondent registered the disputed domain name with the primary aim of misleading the public into believing that their website is the official VERTU brand site, thereby gaining undue benefits;

The website of the disputed domain name contains information about the “VERTU” brand, misleading the public into believing that the website is the official VERTU site;

Meanwhile, the website sells mobile phone products, all of which are from the VERTU series, including the Aster P series and the mobile phone series in collaboration with Bentley. The Respondent is not an authorized dealer or distributor of the Complainants, and has not been authorized to sell VERTU phones. Additionally, the Aster P series, a smartphone launched by the Complainants in 2018, is no longer in production.

Considering that the “VERTU” brand is well-known to the relevant public and carries significant commercial value, the registration of the disputed domain name by the Respondent appears to exploit the Complainants’ positive corporate reputation and influence. This action aims to gain undue attention from the public, making it easier for their products to enter the market or obtain better trade conditions. Ultimately, such unfair competition and trademark infringement could result in benefits for the Respondent. Moreover, with online shopping being one of the main avenues for today’s consumer groups, any misperception that the disputed domain name is the official VERTU online store can result not only in harm to the Complainants’ legitimate interests but also in damage to the lawful interests of consumers.

In conclusion, the Respondent’s registration of the disputed domain name is clearly in bad faith.

The Complainants request that the registration of the disputed domain name shall be canceled.

B. The Respondent

The Respondent does not submit any Response.

4. Discussions and Findings

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, the complainant shall prove the following three elements:

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

Paragraph 4(b) of the Policy states that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in bad faith:

- (i) Circumstances indicating that the respondent 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 is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or

(ii) The respondent 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 respondent has engaged in a pattern of such conduct; or

(iii) The respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) By using the domain name, the respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location.

A. Identity or Confusing Similarity

Under the Paragraph 4(a)(i) of the Policy, the Complainants must prove that the disputed domain name is identical with, or confusingly similar to, the trademark or service mark in which the Complainants have rights.

According to the Chinese trademark registration records submitted by the Complainants, prior to the registration of the disputed domain name, the Complainant 1 had registered the mark "VERTU" (registration number 13517937) on 14 June 2015 and the Complainant 2 had acquired the trademark registration of "VERTU" (registration number G1242942) from 8 August 2014. The Complainants enjoy the respective trademark rights under the Chinese laws.

Although the Complainant 1 had applied to register the marks of "VERTU" or "VERTU 纬图" respectively with the Chinese trademark authorities in 2020 and 2021, these applications are yet to be approved and the Complainant 1 has no relevant legal rights.

The Panel notes that the Complainants supplemented the evidence of the Assignment Agreement of Intellectual Property Rights signed on 11 June 2021 between Vertu Corporation Ltd., its Liquidator and a company named "Godin Holdings Limited". Under the Assignment Agreement, Vertu Corporation Ltd. in Liquidation as the trademark holder agreed to assign, *inter alia*, the India trademark registration of "VERTU" (registration number R1065066IN) to Godin Holdings Limited.

The Panel finds that the Assignment Agreement is not entirely consistent with the other evidence submitted by the Complainants. Under the Assignment Agreement, the Chinese trademark registration of "VERTU" (registration number 13517937) is among the rights to be assigned from Vertu Corporation Ltd. to Godin Holdings Limited. However, the Complainant 1 is the holder of the registered Chinese trademark

“VERTU” (registration number 13517937) and Vertu Corporation Ltd. has no right to transfer the mark. According to the materials provided by the Complainants, the Assignment Agreement has not been implemented and Godin Holdings Limited has not yet acquired the India trademark registration of “VERTU” (registration number R1065066IN), although Godin Holdings Limited promises to transfer it to the Complainant 1 once the assignment is complete. The Panel finds that the Complainant 1 has not acquired any actual legal right regarding the India trademark registration of “VERTU” (registration number R1065066IN).

Based on the foregoing discoveries, the Complainants’ right over the registered marks “VERTU” in China can be confirmed. Despite the global nature of the Internet and the domain name system, the jurisdiction where the Complainants’ trademark right is valid is not considered relevant to the Panel’s assessment under the paragraph 4(a)(i) of the Policy (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, 1.1).

It’s been established in many prior decisions made under the Policy (such as *Disney Enterprises, Inc. v. John Zuccarini, Cupcake City and Cupcake Patrol*, WIPO Case No. D2001-0489 or *IKB Deutsche Industriebank AG v. Bob Larkin*, WIPO Case No. D2002-0420) that the identity or confusing similarity provided in the Paragraph 4(a)(i) of the Policy can be proved by simple comparison of the character compositions of the disputed domain name and the complainant’s legally proven mark.

The disputed domain name “vertuofficialindia.com”, apart from the non-distinctive generic Top-Level Domain “.com”, consists of “vertuofficialindia”, which apparently combines the Complainants’ registered marks “VERTU” with generic suffixes of “official” and “India”. Since “vertu” is the only distinctive part in the overall character set of disputed domain name, suffixation of “official” and “India” to “vertu” does not make the disputed domain name substantively different from the Complainant’s registered marks “VERTU” in China.

Therefore, the Complainants have proved that the disputed domain name is confusingly similar to the trademarks in which the Complainants have rights. The Panel finds that the Complainants have proven the first element under the paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests of the Respondent

Under the Paragraph 4(a)(ii) of the Policy, the Complainants must prove that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainants state that Complainants had never authorized or granted permission to the Respondent to use the VERTU trademark or to register the disputed domain name. The Complainants also state that the Respondent has no Chinese

trademark registration regarding the disputed domain name. The Complainants assert that the Respondent has no “exclusive rights to use the trademark ‘VERTU’ in the disputed domain name “vertuofficialindia.com”.

The Panel notes that the Complainants have preliminarily proved their case and the Respondent is supposed to rebut the Complaint. The Panel handles the case with special caution and is willing to hear from both Parties. Had the Respondent been permitted to use the mark “VERTU” in India? Does the Respondent enjoy any right in the disputed domain name? These questions should be answered by the Respondent.

Unfortunately, the Respondent does not provide any information to the Panel asserting any rights or legitimate interests it may have in the disputed domain name, even though the Panel granted to the Parties the extraordinary period of time to supplement the evidence.

Notwithstanding that the Respondent names itself as “vertu”, the Panel finds that the Respondent’s name, just like its address, is mostly likely not authentic. Therefore, the Panel cannot find the Respondent’s right or legitimate interest in the disputed domain name entirely based on the Respondent’s pseudo name.

The Paragraph 4(c) of the Policy provides a list of circumstances which can be taken to demonstrate a respondent’s rights or legitimate interests in a domain name. However, there is no evidence before the Panel that any of the situations described in the Paragraph 4(c) of the Policy apply here. To the contrary, the lack of any Response leads the Panel to draw a negative inference.

Therefore, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name “vertuofficialindia.com”. Accordingly, the Complaint has proven the second element under the Paragraph 4(a) of the Policy.

C. Bad Faith

Under the Paragraph 4(a)(iii) of the Policy, the Complainants must prove that the disputed domain name has been registered and is being used in bad faith.

Under paragraph 4(c) of the Policy, a respondent’s bad faith is broadly understood to occur where it takes unfair advantage of or otherwise abuses a complainant’s mark (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, 3.1).

Although the Complainants successfully prove their respective rights over the marks “VERTU” in China, the Panel discover from the Complainants’ evidence that the Complainants have no “VERTU” trademark registration in any other jurisdictions. The Complainant 1 has not yet acquired the India trademark registration of “VERTU” (registration number R1065066IN) from Godin Holdings Limited. At the trial of the case, neither Complainants have any trademark registration over “VERTU” in India.

The Complainants' submissions prove that the Complainants have been running brick-and-mortar stores in China from 2007 and operating online retailing business on Chinese e-commerce platforms JD from 2017 and Tmall from 2019. The evidence also prove that the Complainants have actively promoted in China "VERTU" trademarks in advertising activities and social medias (official WeChat account, official Weibo account, and WeChat mini-program, etc.). The Panel finds that Complainants have been using the marks "VERTU" substantively in Chinese market and have become associated with the marks in China.

Although the Complainants claim their reputation and right over the marks "VERTU" in the world, they don't provide the sufficient proofs to substantiate their claims. Given that there are or had been other trademark registrations over "VERTU" owned by Vertu Corporation Ltd. (in Liquidation) or others in the jurisdictions other than China, the rights or reputation associated with the marks of VERTU in these jurisdictions may not be exclusively credited to the Complainants, as proved by the 2021 Assignment Agreement provided by the Complainants. Particularly, the Panel does not find that the Complainants have acquired any common law right through substantive commercial use of the unregistered mark of VERTU in India.

The Complainants provided the evidence of the website linked to the disputed domain name, *i.e.* "<https://vertuofficialindia.com>", on which VERTU series (Aster, Signature, Signature Touch, etc.) of cell phones are being sold. The Panel notes from the Complainants' evidence that the website is solely in English and the currency labels are in India Rupees. The website also shows that "1 Year warranty Guaranteed delivery in 3-4 days".

Although the website linked to the disputed domain name enables the global exposure to consumers, the VERTU cell phones were offered to sell only in India Rupees, which is not a widely available international currency. In addition, the website's "guaranteed delivery in 3-4 days" was more suitable for domestic retailing in India rather than international trade that would take much longer time. Given the overall circumstances, the website linked to the disputed domain name was more likely to target the Indian domestic consumers than to stretch to the Chinese market in which the Complainants enjoy the trademark rights over VERTU.

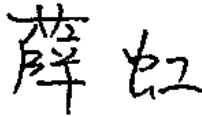
Based on the information available, the Panel cannot confirm whether the Respondent's registration and use of the disputed domain name had been abusive to the trademark rights over VERTU in India. But the Panel finds that the Respondent was unlikely to take advantage or otherwise abuse the Complainant's trademark rights in China.

The Panel's discoveries, of course, does not affect the Complainants' refiling of the case against the Respondent after the Complainants successfully acquired the entire trademark portfolio over "VERTU" marks from Godin Holdings Limited.

The Panel, therefore, concludes that the Complaint has not been able to prove that the Respondent has registered and is using the disputed domain name “vertuofficialindia.com” in bad faith as required in the third element under the Paragraph 4(a) of the Policy.

5. 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 Complaint be dismissed.



Xue Hong

Dated: 6 March 2024