

**Administrative Panel Decision
In the matter of**

**Between
Apple Inc.**

**And
Eppies Internet**

Case No. rca/dndr/2007/12

1. The Parties

The Complainant is Apple Inc., formerly known as Apple Computer, Inc, a corporation incorporated under the laws of the United States of America, having its place of business at 1 Infinite Loop, Cupertino, California 95014, United States of America.

The Respondent is a sole proprietorship registered under the laws of Malaysia, having a principal office at 4-A, Taman Gurun, 08300, Gurun, Kedah, Malaysia. The registration date of the Respondent is 26 September 2001.

2. The Domain Name and Registrar

The domain name is <apple.com.my>.

The Registrar is MYNIC Berhad (MYNIC).

3. Procedural History

The Complainant filed its Complaint with the Regional Centre for Arbitration Kuala Lumpur ("the Centre") on 5 December 2007 both through e-mail and hardcopy. The Centre sent an Acknowledgement of Receipt dated 12 December 2007 and thereafter sent a request to MYNIC for verification of the identity of the domain name holder on 13 December 2007. The Centre forwarded the Complaint to the Respondent by courier and email on 14 December 2007.

An examination of this material confirms that all technical requirements for the initiation of this proceeding have been satisfied. Having verified that the Complaint satisfied the formal requirements of the MYNIC's (.my) Domain Name Dispute Resolution Policy and Rules, and the Centre's Supplemental Rules, the proceedings formally commenced on 13 December 2007.

The due date for the Respondent to respond was 9 January 2008. However, the Respondent did not submit any response nor request for any additional time as provided by the Rules.

The Complainant elected a single-member panel. The Centre appointed Ms Wong Jin Nee in this matter on 30 January 2008. The Panel has submitted a statement of Declaration of Impartiality and Independence as required by the Centre.

4. Factual Background

The Complainant is Apple Inc, formerly known as Apple Computer, Inc, a corporation incorporated under the laws of the United States of America, having its place of business at 1 Infinite Loop, Cupertino, California 95014, United States of America.

It was incorporated in 1976 in the United States of America. Since its incorporation, it has designed, manufactured, marketed, offered and rendered services relating to computers, computer peripherals and computer programs as well as many internet, online, wire base and wireless goods, data communication goods and services throughout world including Malaysia. The Complainant's main website is accessible at the URL <http://www.apple.com>. The Complainant also operates numerous country specific websites [Annex 4].

The Complainant is the owner of various APPLE trade marks and has secured registrations of various APPLE trade marks in many countries throughout the world including Malaysia for an extensive range of goods and services in Classes 9, 14, 16, 25, 28, 37, 38, 41 and 42. The Complainant has attached copies of the Certificates of registration of these various APPLE trade marks in Malaysia [Annex 5].

In addition to the registrations of the APPLE trade marks, the Complainant has also adduced copies of the trade mark applications for the APPLE trade marks which are still pending registration and/or published in Malaysia [Annex 6].

The Complainant has also used and promoted the trade marks consisting of the word "APPLE" extensively for its goods and services and has created a significant goodwill and reputation in connection with the APPLE trade marks for such goods and services.

The Respondent created the disputed domain name www.apple.com.my on 8 December 2001 [as per the MYNIC Whois search report at Annex 3]. Copies of the print-outs from the Respondent's website www.apple.com.my were adduced as Annex 7.

5. Parties' Contentions

The Complainant relies on the above stated facts and contends that the Respondent does not have any rights or legitimate interests in the domain name www.apple.com.my. The Complainant has never authorised the Respondent to use the word "APPLE" in the disputed domain name nor has the Complainant authorised the Respondent to sell any products bearing the Complainant's APPLE trade marks.

The Complainant contends that the Respondent is not commonly known by the name "APPLE". The Complainant further contends that the Respondent has registered the disputed domain name without authorisation and use of the disputed domain name www.apple.com.my will lead an internet user into believing that the Respondent is associated with the Complainant.

The Complainant also claims that in view of its goodwill, any person visiting the website designated by the domain name www.apple.com.my would assume that the website has been created with the endorsement or participation of the Complainant since the website contains the Complainant's APPLE trade marks and products. The Complainant contends that the registration and use of the disputed domain name www.apple.com.my passes off the Respondent's website as one which is associated with the Complainant.

The Complainant states that the disputed domain name has been registered in bad faith by the Respondent as there was a clear indication that the Respondent by using the disputed domain name, deliberately attracts potential customers of the Complainant's products to its website for commercial purposes. Specific reference is made by the Complainant to the case of Apple Computer Inc. v Omar Acosta Rivera (WIPO D2006-1118) [Annex 8], where the Panel had stated that "the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his websites by creating a likelihood of confusion with Complainant's trade mark as to the source, sponsorship, affiliation, or endorsement of his website. Pursuant to paragraph 4(b)(iv) of the Policy this is evidence of use in bad faith". The Complainant as refers to a previous decision of the Regional Centre for Arbitration Kuala Lumpur ("RCAKL") in Hugo Boss AG v Eppies Internet (Case No. rca/dadr/2004/02) ("Hugo Boss case") involving the Respondent where the disputed domain name www.apple.com.my was even mentioned as one of the websites registered by the Respondent. The Complainant contends that the Respondent continues to register domain names in bulk and that the Respondent is a domain name squatter and is hoping to gain financially from any of the domain names which they have registered in bulk.

In accordance of Paragraph 12(1)(i) of the Policy, the Complainant requests that the disputed domain name, www.apple.com.my be transferred to the Complainant.

The Respondent did not file any valid response under Paragraph 6 of the Rules. The Respondent, through her technical contact, Anthony Tsai sent an email dated 14 February 2008 to the Centre, stating amongst others, Apple is a common noun which could be used in publication and that apple.com.my is running Apple user online web portal and community website.

6. Discussions and Findings

Rule 17 of MYDRP instructs the Panel to decide the proceeding based on the documents and evidence submitted by the Parties, the Policy and Rules as well as any other rules and principle of law which are applied in Malaysia.

Paragraph 5 of the Policy provides that the Complainant must establish BOTH of the following elements in the Complaint:

- (i) The Domain Name is identical or confusingly similar to a trade mark or service mark to which the Complainant has rights; and
- (ii) The Respondent has registered and/or used the Domain Name in bad faith.

Identical or Confusingly Similar

The Panel finds that the disputed domain name www.apple.com.my incorporates the Complainant's APPLE trade mark, notwithstanding the addition of a gTLD ".com" and a ccTLD ".my". Inclusion of such top level domain names are a technical requirement that should be disregarded when determining whether the domain name is identical or confusingly similar to the mark. The Panel has no difficulty in finding that the disputed domain name is identical to the Complainant's APPLE trade mark. The Complainant has established that it has both the statutory and common law rights to the APPLE trade marks.

Rights and legitimate interests

Paragraph 7 of the Policy provides that the Respondent may prove its right and legitimate interest in the disputed domain name by substantiating with evidence that:

- (i) before the date of the Respondent being informed of the Complainant's dispute, the Respondent had used or made preparations to use the disputed domain name or a name corresponding to the disputed domain name in relation to a genuine offering of goods or services; or
- (ii) the Respondent is commonly known by the disputed domain name even though it has acquired no trade mark or service mark right in the same name; or
- (iii) the Respondent is using the disputed domain name for legitimate, non commercial and/or fair purposes and has no intention of using the same for profits or to deceive the public.

The Respondent did not file any response to refute the Complainant's assertions and contentions. As email communication by the Respondent dated 14 February 2008 was not a proper and valid response within the Rules, the Panel finds it irrelevant to refer to the content of the email. In any event, the Panel is of the view that the response did not contain any justifications or evidence to establish the rights and legitimate interests in the disputed domain name.

In the circumstances, the Panel finds that there is no evidence on record to demonstrate that the Respondent has rights or legitimate interests in respect of the disputed domain name www.apple.com.my or that the Respondent has made any use or preparation to use the disputed domain name in connection with the bona fide offering of goods or services. The Respondent is not commonly known by the disputed domain name and has not acquired any trade mark right in the same. The Respondent has not been authorised by the Complainant to sell its products or services by reference to the Complainant's APPLE trade marks. The Complainant on the other hand has unequivocally established its rights and ownership to the APPLE trade marks for many years prior the Respondent's registration of the disputed domain name in 2001.

Accordingly, the Panel finds that the Respondent has failed to establish any right or legitimate interest in the disputed domain name, in accordance with Paragraph 7 of the Policy.

Bad faith

Clause 6.1 of the Policy stipulates that the evidence of bad faith registration and/or use of the Domain Name may include, amongst others, the following circumstances:

- (i) you registered and/or are using the Domain Name mainly to sell, rent or transfer the Domain Name for profit to the Complainant, its competitors or the owner of the trade or service mark; or
- (ii) you registered and/or are using the Domain Name to prevent the owner of a trade mark or service mark; or
- (iii) you registered and/or are using the Domain Name to disrupt the business of the Complainant; or
- (iv) you registered and/or are using the Domain Name for the purposes of and with the intention to attract or divert, for commercial gain, Internet users to:-
 - (a) your web site;
 - (b) a web site of the Complainant's competitor; or
 - (c) any other web site and/or online location,

by creating a possibility of confusion or deception that the web site and/or online location is operated or authorised by, or otherwise connected with the Complainant and/or its trade mark or service mark.

The Complainant states that the Respondent has registered the disputed domain name in bad faith as there was a clear intention that the Respondent, by using the disputed domain name, deliberately attracts potential customers of the Complainant's products to its website for commercial purposes. The Complainant further contends that the Respondent registered the disputed domain name with an intention to attract or divert, for commercial gain, internet users from the Complainant's website to the Respondent's. The Complainant states that by using the APPLE trade marks on the Respondent's website, the Respondent has created a situation whereby users are confused into thinking that the Respondent's website is connected or at least associated with the Complainant.

As indicated above, the Respondent did not contest any of the Complainant's assertions of facts nor its contentions. Based on the manner of the Respondent's use of the website as shown in Annex 7 and given the extent of fame and reputation of the Complainant's APPLE trade marks, the Panel finds that the Respondent is using the disputed domain name for the purposes of and with the intention to attract or divert, for some commercial gain, potential customers of the Complainant's products to its website.

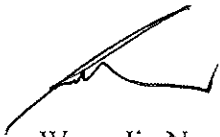
The Panel finds that the case falls squarely within Clause 6.1(iv) of the Policy, where the disputed domain name has been registered and used in bad faith since the Respondent registered and is using the disputed domain name for the purposes of and with the intention to attract or divert, for commercial gain, Internet users to the Respondent's website by creating a possibility of confusion or deception that the web site and/or online location is operated or authorised by, or otherwise connected with the Complainant and/or its APPLE trade marks.

In addition, the Complainant, based on the Hugo Boss decision, claims that the Respondent's behaviour by continuing to register domain names in bulk that the Respondent is a domain name squatter and is hoping to gain financially from any of the domain names which the Respondent has registered in bulk. It is clear from Paragraph 6 of the Policy that the circumstances enumerated regarding bad faith registration and use of the domain name is not exhaustive. In addition to falling within Clause 6.1(iv) of the Policy, the Panel also finds that this case seems to fall within the meaning of "among others" set out in Paragraph 6. The Panel takes the view that the Respondent does appear to be engaging in a pattern of registering domain names utilizing well-known trade marks in which the Respondent has no rights or legitimate interests. Such "pattern of conduct" also provides another basis to lead to a finding of a bad faith registration and use of the disputed domain name by the Respondent.

In view of all the evidence submitted by the Complainant, the facts and circumstances, and the Respondent's failure to respond or refute the Complainant's contentions, the Panel finds that the disputed domain name has been registered and used in bad faith.

7. Conclusion

In accordance with the findings under paragraphs 5, 6 and 7 of the Policy and Rule 17 of the Rules, the Panel directs that the disputed domain name www.apple.com.my be transferred to the Complainant.



Wong Jin Nee
Sole Panellist
Date: 25 February 2008