

**ADMINISTRATIVE PANEL DECISION**  
**In the matter of a Domain Name Dispute**  
**Between**  
**NIKON (MALAYSIA) SDN BHD [Complainant]**  
**And**  
**FIRST WEB ENTERPRISE [Respondent]**  
**Case Number rca/dndr/2008/14**

**1. The Parties**

- 1.1. The Complainant is Nikon (Malaysia) Sdn Bhd, with an address at 11<sup>th</sup> Floor, Block A, Menara PKNS, No. 17 Jalan Yong Shook Lin, 46050 Petaling Jaya, Selangor, Malaysia.
- 1.2. The Respondent is First Web Enterprise, with its address at No. 14 School Lane, 11600 Georgetown, Penang, Malaysia, and at the present time is the registrant of the domain [www.nikon.my](http://www.nikon.my).

**2. The Domain Name and Registrar**

- 2.1. The Domain Name in issue is [www.nikon.my](http://www.nikon.my), and the Registrar of this domain is MYNIC Bhd.

**3. Procedural History**

- 3.1. The Complaint was filed on 10.4.2008 with the Regional Centre for Arbitration, Kuala Lumpur (“the Centre”). On 10.4.2008, the Centre transmitted a request to MYNIC for verification of the identity of the domain name holder. MYNIC transmitted its response confirming that the Respondent is listed as the registrant of the domain name, and provided its contact details.
- 3.2. The Centre verified that the Complaint is complete and satisfied the formal requirements of the MYNIC Domain Name Dispute Resolution Policy (the “Policy”), the MYNIC Domain Name Dispute Resolution Policy - the Rules (the “Rules”), the Regional Centre for Arbitration Kuala Lumpur’s Supplemental Rules to MYNIC’s Domain Name Dispute Resolution Policy (the “Supplemental Rules”).
- 3.3. In accordance with the Rules, the Centre formally notified the Respondent of the Complaint, and the proceedings commenced on 11.4.2008.
- 3.4. The Respondent submitted its Response on 30.4.2008, and the Complainant submitted its Reply on 13.5.2008.
- 3.5. The Centre appointed Khoo Guan Huat as the sole panelist in this matter. The Panel finds that it was properly constituted. The Panel has submitted the

Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Centre to ensure compliance with the Rules.

#### 4. Parties' Contentions

- 4.1. The Complainant contends, among others, that:
- a) its legal status to maintain this complaint is from its ownership of the Nikon Trademark Registration, M/73386 in Class 9 ("the registered Nikon Trademark"). This is at paragraph 1(A) of the Complaint;
  - b) The history of Nikon dates back to 1917 when 3 of Japan's leading optical manufacturers merged to form a fully integrated optical company;
  - c) Nikon designs, develops, manufactures and markets a gamut of optical, photographic and optoelectronic products globally;
  - d) Nikon Imaging Products have been distributed and marketed in Malaysia through Shiriro (Malaysia) Sdn Bhd for more than 20 years before the establishment of the Complainant in 2001;
  - e) On 1<sup>st</sup> April, it tried to register the domain [www.nikon.my](http://www.nikon.my), as a 3<sup>rd</sup> domain, in addition to the domains [www.nikon.com.my](http://www.nikon.com.my) and [www.nikonclub.com.my](http://www.nikonclub.com.my) that it had registered earlier;
  - f) it was informed that the registration of the domain [www.nikon.my](http://www.nikon.my) had been taken up by the Respondent;
  - g) it is entitled to the domain [www.nikon.my](http://www.nikon.my) for these reasons:
    - i. it is the corporate representation (*sic*) of an international company (a subsidiary of Nikon Hong Kong Ltd), and the registered Nikon Trademark is owned by Nikon Corporation and its subsidiaries;
    - ii. the Nikon subsidiaries in the Asia region will adopt domain name that is representative of the Nikon corporate brand, such as [www.nikon.sg](http://www.nikon.sg) for Singapore, and [www.nikon.hk](http://www.nikon.hk) for Hong Kong;
    - iii. the Respondent's hold of the domain [www.nikon.my](http://www.nikon.my) re-directs visitors to an index page (as at 3.4.2008). The relevant webpage shows that it is not a Nikon related subsidiary nor is it reflective of the Nikon Corporation company;
    - iv. the Respondent is squatting on the Complainant's trademark for unknown reason as the Respondent had not provided any proof of ownership of the Nikon trade name nor that they are lawfully doing business under that name;
    - v. the action of the Respondent confuses end users who wish to obtain information pertaining to the rightful trademark registrant, Nikon (Malaysia) Sdn Bhd. In this respect, the Panel has doubts as to the correctness or otherwise of the assertion that Nikon (Malaysia) Sdn Bhd is the rightful trademark registrant for the "NIKON" trademark, for the reasons that will be mentioned later in this decision;
    - vi. the Respondent's action dilutes the goodwill of Nikon Corporation and Nikon (Malaysia) Sdn Bhd, that they are lawfully and actively contributing to the Malaysian economy;
    - vii. the action disrupts Nikon Corporation's efforts to create a cyber presence for its subsidiaries;
    - viii. the Respondent is preventing the Complainant and Nikon Corporation from using the domain name which is identical with its trademark or service mark for its daily business use.
- 4.2. The Complainant seeks the remedy of having the domain [www.nikon.my](http://www.nikon.my) transferred to it.

- 4.3. The Respondent denies the Complainant's contentions and asserts that:
- a) The use of the web (the Panel believes the intended meaning here is domain) was not in bad faith;
  - b) There was no indication as at 30.4.2007 that domain name will be sold, rented or transferred for profit to the Complainant or someone else;
  - c) MYNIC has made its best efforts to inform the owner of Nikon.com.my to register its .my domain earlier;
  - d) There was a period of half a year given to the organisations to register their unique identity, by way of the .my domain;
  - e) There is no evidence that the Respondent's registration of [www.nikon.my](http://www.nikon.my) was intended to disrupt the Complainant's business as:
    - i. The Respondent was helping the Complainant by creating a user forum and blog;
    - ii. An email was sent to the Nikon webmaster asking for permission to place the Nikon trademark (logo) on the webpage of the domain;
    - iii. The webpage of the domain remains unused until the Complaint was filed;
    - iv. The webpage for the domain will still be used as a forum but without any Nikon trademark;
  - f) There is no intention nor evidence, as at the date of the Complaint nor in the foreseeable future that the registration or use of the domain name is for the purposes of commercial gain;
  - g) With respect to allegations of possibility of confusion and deception that the website operated by the Respondent may be seen as operated or authorised by, or otherwise connected with the Complainant or its trade mark, the email sent to the Nikon Webmaster was intended to prevent this misunderstanding by others;
  - h) The domain is intended to provide a service to the Nikon user community, with no intention to deceive the public;
  - i) The registered Nikon Trademark is a class 9 registration, and the Nikon.my is a standalone trademark:
    - i. The [www.nikon.my](http://www.nikon.my) should not be said as the owner of the Nikon trademark;
    - ii. The domain [www.nikon.my](http://www.nikon.my) is intended to mean Nikon from Malaysia, and not exclusively for business purposes;
  - j) Nikon Malaysia nor Nikon Japan have never been promoting the country codes top level domain (*sic*), such as Nikon.sg and Nikon.hk. In fact, they have not done anything with respect to these domains;
  - k) The proposed reclamation of the [www.nikon.my](http://www.nikon.my) domain will prevent other internet users from creating a non-profit service forum or blog;
- 4.4. The Complainant in its reply, contends and asserts that:
- a) The Complainant's trade mark and intellectual property rights to "Nikon" is not disputed;
  - b) The domain [www.nikon.my](http://www.nikon.my) contains the "Nikon" name, and is therefore not a standalone trademark, and the use of it infringes the Complainant's intellectual property rights;
  - c) The domain name is identical or confusingly similar to a trade mark or service mark to which the Complainant has rights;
  - d) The Respondent breached its representation and warranty to MYNIC under clause 3.2 of the Agreement for Registration of Domain Name, knowing full well that the Complainant is the rightful owner of the Nikon trademark;
  - e) The Complainant made an application to register the domain name in 2007;

- f) The Respondent's business is described as "Internet Web Design, Web Hosting & Networking with holdings in several domain" (*sic*);
- g) The web site of the domain, on 1.4.2008, contained an advertisement inviting people to take advantage of registering good domain names and to contact [kc@1st.net.my](mailto:kc@1st.net.my). This is the same email account used to correspond with Nikon Japan on 1.4.2008;
- h) The screen capture of the advertisement on the website (as at 1.4.2008) promoted the use of a strategic domain name, which could bring potential competitive advantages to one's business;
- i) When the Complainant telephoned the Respondent on 1.4.2008, the Respondent indicated that the Domain Name could be transferred to the Complainant, but for a fee;
- j) The Respondent sent an email to Nikon Japan for permission to use the "Nikon" logo on 1.4.2008 at 5.14 pm;
- k) The website of the domain has since 2.4.2008 remained an index page, and unused;
- l) The Respondent sometime between the telephone conversation on 1.4.2008 and 2.4.2008 removed its advertisement from the website;
- m) The Respondent had acted in bad faith, in that:
  - i. The Respondent had offered to transfer the Domain Name to the Complainant for a fee;
  - ii. The Respondent had advertised in the website its business type on 1.4.2008, as registered with the Companies Commission of Malaysia, before it was taken down;
- n) The subsequent action taken by the Respondent in sending an email to Nikon Japan after receiving the Complainant's telephone call was a cover-up to the Respondent's bad faith intentions;
- o) The purported use of the website as a forum and blog for Nikon users is an afterthought and unfounded, as the website never contained any such contents;
- p) The registration and/or use of the Domain Name by the Respondent has the effect of:
  - i. Confusing end users who wish to obtain information pertaining to the rightful trademark of the Complainant;
  - ii. Diluting the goodwill of the Complainant and Nikon Corporation;
  - iii. Disrupting the efforts of the Complainant and Nikon Corporation to create a cyber presence for its subsidiaries;
- q) The Respondent has no right or legitimate interest to register the Domain Name, and for this the Complainant contends that the Respondent held the Domain Name for unknown reasons;
- r) The Complainant had been actively applying for the Domain Name since 1.11.2007.

## 5. Discussions and Findings

- 5.1. Rule 17 provides that the Panel will decide a proceeding based on the documents and evidence submitted by the Parties, the Policy and Rules as well as any other rules and principles of law which are applied in Malaysia.
- 5.2. Insofar as the Reply to be submitted by the Complainant is concerned, Rule 7.2 provides that the Reply must comply with Rule 4. The Reply may only answer the allegations made by the Respondent in the Response and must not raise any new issues whatsoever. Rule 4.4 provides, among others, that **ALL** (*emphasis added*)

relevant documents and evidence which the Complainant is relying on should be attached to the Complaint.

5.3. The Panel has reviewed the Reply submitted by the Complainant, and before dealing with the Panel's substantive findings pertinent to this Complaint, the Panel makes the following findings:

**a) The alleged telephone conversation on 1.4.2008**

- i. The references to an alleged telephone conversation on 1.4.2008 between the Complainant and the Respondent, during which the Respondent was purported to have indicated that it would transfer the Domain Name to the Complainant for a fee, is a matter raised for the first time in the Complainant's Reply to the Respondent's Response.
- ii. This alleged telephone conversation was not raised in the Complaint. As this telephone conversation is alleged to have taken place on 1.4.2008, this piece of evidence would have been available to the Complainant at or before the time the Complaint was filed.
- iii. It would have been clear to the Complainant at all material times that this event would have been a crucial matter in these proceedings. Raising this issue only in its Reply, when the Complainant could have had done so earlier in its Complaint, has deprived the Respondent of the benefit of being able to deal with or respond to this issue in the Respondent's Response.
- iv. The Panel will therefore not consider references to the alleged 1.4.2008 telephone conversation in its findings.

**b) Screen capture of website on 1.4.2008**

- i. In the same way, the screen capture of the words used in the website, as set out in paragraphs 10 and 11 of the Complainant's Reply (with the document annexed as Annexure iii) is evidence that would have been available to the Complainant at the time of when the Complaint was filed.
- ii. As this was not mentioned in the Complaint and was for the first time raised in the Complainant's Reply, the Respondent has undoubtedly been handicapped by being unable to deal with this issue. The Panel will thus disregard all references to the existence of this alleged fact.

**c) Screen capture of website on 2.4.2008**

- i. The Panel however considers that the references to the Screen Capture of the Respondent's website at [www.nikon.my](http://www.nikon.my) as having only an index page (as at 2.4.2008) are proper. This was raised in the Complaint (paragraph 6(b) thereof).

5.4. In making these findings, the Panel is mindful of the requirements in Rule 12 of the Rules. Rule 12, among others, obliges the Panel to make sure that the Parties are treated fairly and each Party is provided with a fair opportunity to present its case.

5.5. The Panel now proceeds to deal with the substantive issues raised in the matter. Paragraph 5 of the Policy provides that the Complainant must establish BOTH the following elements in the Complaint:

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

5.6. In this respect, the Panel proposes to deal with the issues in the following manner:

- a) Whether the Complainant has rights to a trade mark or service mark that the Domain Name is alleged to be identical or confusingly similar to;
  - b) Whether the Domain Name is identical or confusingly similar to the trade mark or service mark in question;
  - c) Whether the Respondent had registered or used the Domain Name in bad faith.
- 5.7. The Panel is mindful of Rule 17 of the Rules which provides, among others, that the Panel will decide a Proceeding based on the documents and evidence submitted by the Parties, the Policy and Rules as well as any other rules and principles of law which are applied in Malaysia.

**6. Whether the Complainant has rights to a trade mark or service mark that the Domain Name is alleged to be identical with or confusingly similar to**

- 6.1. In the Complaint, the Complainant asserted that its legal status to maintain the Complaint is by virtue of it being the Owner of Nikon Trademark Registration, M/73386 in Class 9 (“the registered Nikon Trademark”).
- 6.2. A perusal of the trademark registration certificate shows that the Owner of the registered Nikon Trademark is “NIPPON KOGAKU K.K.”, and not the Complainant.
- 6.3. Yet in paragraph 6(a)(1) of the Complaint, the Complainant claims to be “... *a corporate representation (sic) of an International company (a subsidiary of Nikon Hong Kong Ltd), and the Nikon trademark is rightfully owned by Nikon Corporation and its subsidiaries...*”. This appears to the Panel to be inconsistent with the Complainant itself claiming to be the owner of the registered Nikon Trademark.
- 6.4. Apart from these and other general assertions such as “... *Complainant’s trade mark and intellectual property rights to the “Nikon” name is clear and is not disputed ...*”(sic), there is no evidence showing a connection between Nippon Kogaku K.K., Nikon Corporation, Nikon Hong Kong Ltd and the Complainant that may somehow have devolved a right to the NIKON trademark on the Complainant.
- 6.5. The Complainant alluded to the fact that the Nikon Imaging Products have been distributed and marketed in Malaysia through Shiriro (Malaysia) Sdn Bhd for more than 20 years before Nikon (Malaysia) Sdn Bhd was established in 2001.
- 6.6. Based on the above, the Panel finds that:
- a) The Complainant has not shown a connection between “NIPPON KOGAKU K.K.” and Nikon Corporation;
  - b) Even if ownership of the registered Nikon Trademark is with Nikon Corporation, the Complainant has not shown that it has rights to the trademark. No evidence is given to show, among others, that the Complainant is the registered user of, licensed or authorised to use the trademark;
  - c) A claim in paragraph 6(a)(1) of the Complaint that the Complainant is the corporate representative of an international company which is a subsidiary of Nikon Hong Kong Ltd is, to the Panel’s mind, insufficient to establish rights to the registered Nikon Trademark;
  - d) If the Panel had misunderstood the purport and effect of paragraph 6(a)(1) of the Complaint, and that it is intended to mean that the Complainant is a subsidiary of Nikon Hong Kong Ltd, this claim in itself is insufficient to establish the Complainant’s rights to the registered Nikon Trademark;
  - e) The Panel is unable to find anywhere in the documents submitted how the rights to the registered NIKON trademark may have devolved upon the Complainant.

There is no evidence showing any connection between Nippon Kogaku K. K. and the Complainant;

- f) The assertion that the “*Nikon trademark is rightfully owned by Nikon Corporation and its subsidiaries*” is only partially correct, in that it is only so if it could be shown that Nippon Kogaku K.K. is Nikon Corporation, or alternatively, its predecessor. Further, a subsidiary cannot be said to own a trademark that is lawfully registered in the name of its holding company, which is a legal entity separate from the subsidiary;
  - g) The Complainant in paragraph 6(b)(1) of its Complaint claimed to be the “... *rightful trademark registrant* ...”. This claim runs contrary to the documents which show that the rightful trademark registrant for the NIKON mark is Nippon Kogaku K.K.;
  - h) The Complainant also claimed to be the marketing and/or distribution entity of Nikon Corporation. This fact does not necessarily establish that the Complainant has rights to the trade mark.
- 6.7. In view of the above, regretfully, it is the Panel’s finding that the Complainant has failed to establish rights to a trade mark or service mark that the Domain Name is alleged to be identical or confusingly similar to. The Panel refers to the decision of the **Administrative Panel in *Actebis Holding GmBH v peacock.com Corporation*** (Case No. DBIZ2001-00005, February 14, 2002) which among others, said:  
“...*An applicable dispute under Paragraph 4(a)(i) of the STOP speaks of a domain name “identical to a trademark or service mark in which the Complainant has rights”. Consequently, the onus is on the Complainant if it is not the registered holder of the mark, to provide that it has sufficient rights given to it by the holder to justify its lodging of a Complaint. Obvious examples could include licensees, assignees, mortgagees ...”*”
- 6.8. The Panel makes this finding with great reluctance because it is likely that with some diligence, the Complainant would be able to produce the requisite documents to show that it has rights to registered Nikon Trademark.

**7. Whether the Domain Name is identical or confusingly similar to the trade mark or service mark in question**

- 7.1. The trade mark in question is NIKON, and the domain name is [www.nikon.my](http://www.nikon.my).
- 7.2. The Respondent contends that Nikon.my is a standalone trademark, as an internet domain can be a trademark. The Complainant, in its reply, disputes this, and contends that the use of the “Nikon” name in the domain Nikon.my is in any event “... *a breach of the Complainant’s intellectual property...*” (*sic*).
- 7.3. The Panel is of the view that it is not unlikely that a significant number of internet users, clicking on [www.nikon.my](http://www.nikon.my) would expect to be led to a NIKON related website.
- 7.4. The Panel therefore finds that the domain name [www.nikon.my](http://www.nikon.my) is confusingly similar to the NIKON trademark.
- 7.5. The Panel takes cognisance of the fact that there are decisions of other Panels that have suggested that the inclusion of a gTLD or ccTLD is immaterial to the issue of whether or not a domain name is identical to a trademark, but expresses no view on them for the time being.

**8. Whether the Respondent had registered or used the Domain Name in bad faith**

- 8.1. The Panel notes that paragraph 6 of the Policy provides examples of bad faith actions with respect to registration or use of a domain name. As the word “may” is employed in paragraph 6.1, the Panel considers that the examples set out therein

are not exhaustive of all the circumstances that can amount to evidence of bad faith.

- 8.2. The Panel also notes that a Respondent to a Complaint may rebut allegations of bad faith in its registration or use of a domain name by showing, among others, that it has rights and legitimate interests in the domain name in issue.
- 8.3. With respect to the Complainant's contention that the Respondent had acted in bad faith, in its registration or use of the domain [www.nikon.my](http://www.nikon.my), the Panel finds that the only contentions of the Complainant that have relevance are:
  - a) The Respondent had set up the website using the domain to prevent the owner of a trade mark or service mark from using the domain name which is identical to its trade mark or service mark;
  - b) The website has since 2.4.2008 been inactive.
- 8.4. There have been other specific allegations that could have augmented the Complainant's allegations of bad faith. However, for reasons mentioned earlier, the Panel is compelled to disregard them. Specifically, the Panel is disregarding all references to an alleged telephone conversation between the Parties on 1.4.2008 and evidence of words used in the website which allegedly existed on or before 1.4.2008, and which words were then allegedly removed from the website thereafter.
- 8.5. The Respondent's position is that it has always intended to use the website bearing the domain name [www.nikon.my](http://www.nikon.my) as a user forum page, or a blog, for Nikon users in Malaysia. In this connection, the Respondent claims that it intended to use the domain for legitimate, non-commercial and fair purposes, and that there was no intention to deceive the public in so using the domain name.
- 8.6. Additionally, the Respondent contends that the .my domain "... *was not mainly for the business usage – not a .com. Thus there was no right to claim back the domain as Nikon Malaysia was a commercial corporation.*" (sic).
- 8.7. Further, the Respondent argues that the domains [www.nikon.sg](http://www.nikon.sg) and [www.nikon.hk](http://www.nikon.hk) have never been promoted by either the Complainant or Nikon Japan, nor was anything done to these websites.
- 8.8. The Complainant did not rebut the Respondent's assertion that the Complainant's associated companies in Singapore or Hong Kong did not do anything with respect to the websites bearing the domain [www.nikon.sg](http://www.nikon.sg) and [www.nikon.hk](http://www.nikon.hk) respectively.
- 8.9. The failure to so rebut may give rise to an inference that the Complainant wishes to monopolise the domain [www.nikon.my](http://www.nikon.my) to the exclusion of others, without using the said domain. This is contrary to the Complainant's suggestions that the Respondent's action is disrupting the Complainant's and Nikon Corporation's "*effort to create a cyber-presence for its subsidiaries under a symbolic and similar Domain Name structure...*"
- 8.10. In the same way, the Respondent's assertion goes some way in lending support to the suggestion that the Complainant did not intend to use the domain name which the Complainant claims to be identical with its trademark "*for its daily business use*" (as the Complainant claimed in paragraph 6 of the Complaint).
- 8.11. As such, the Panel finds that the Complainant has failed to make out a case using specifically the examples under paragraph 6 of the Policy to demonstrate that the Respondent had acted in bad faith in its registering or use of the domain [www.nikon.my](http://www.nikon.my).
- 8.12. As mentioned earlier, the Panel does not consider the examples set out in paragraph 6 of the Policy to be exhaustive of all the examples of bad faith acts. As



the Respondent claims that the reason for registering the domain [www.nikon.my](http://www.nikon.my), was so that the domain could be used as some kind of a forum for Nikon users, the Panel is of the view that it is entitled to critically consider the reason offered to determine the veracity of the Respondent's assertion.

- 8.13. Based on the available evidence and documents, the Panel finds that, contrary to the Respondent's assertion, the domain name was not intended for a website to serve as a user forum or blog for Nikon users. There is no evidence that the Respondent had used or made preparations to use the Domain Name for this purpose. Furthermore:
- a) the Respondent's own description of its business in its records lodged with the Companies Commission of Malaysia suggests that the Respondent is in the business of holding several domains, among others;
  - b) if indeed a forum or blog for Nikon end users were intended to be set up, it would have been more logical for an individual's name to be used for the registration of the Domain Name, as opposed to the use of a business name. This will dispel any notion that the activity allegedly intended for the website was intended for commercial purposes.
- 8.14. The resultant effect of the above is that the Panel finds that the Respondent did not intend to use the domain for the claimed non-commercial, non-profit purpose.
- 8.15. In point of fact, the Respondent in its Response has admitted to being aware of the existence of Nikon in Malaysia, agreeing that Nikon has "*contributed a lot towards the economy of Malaysia ...*" (item (c) on page 5 of the Response). The Panel takes cognisance that despite being so aware of Nikon's activities in Malaysia, the Respondent still went ahead to register the domain [www.nikon.my](http://www.nikon.my) without any known reason which can be construed as legitimate.
- 8.16. The Panel also acknowledges that in circumstances where a person registers a well-known trade name as a domain name in the absence of any legitimate reason, it is likely that such person intends to equip himself with an instrument of fraud, to appropriate the goodwill and property of the trade name owner. It also suggest evidence of threat of dishonest use of such trade name – see *British Telecommunications plc & anor v One in a Million Ltd & ors* [1998] 4 All ER 476, and *Petroliam Nasional Berhad v Khoo Nee Kiong* [2003] 4 MLJ 216.
- 8.17. As the reason offered by the Respondent is not one that is accepted by the Panel, the Panel is moved to find that the Respondent had acted in bad faith when it registered the Domain Name [www.nikon.my](http://www.nikon.my).
9. **Other Findings**
- 9.1. For the sake of completeness, the Panel sets out here its findings on some of the other matters mentioned in the documents:
- a) The contention that a .my domain is not mainly for business usage is misconceived. This is because a .my domain is available for registration to all Malaysian entities and individuals, regardless of whether or not they are business entities.
  - b) The fact that a Complainant might have been informed by the Service Provider of the availability of a domain name is not something which this Panel gives any real weight to. This has no real bearing on the issue of rights and legitimate interests of the Parties in a Domain Name Dispute Resolution proceeding.
  - c) The Panel regrets that the Complainant only chose to disclose, during its Reply to the Respondent's Response, the alleged telephone conversation of 1.4.2008 and evidence of the screen capture of the website on 1.4.2008. The Panel feels

that it would have been able to give a more rounded decision in the event that these issues were raised in the Complaint earlier.

**10. Conclusion**

- 10.1. In the light of the above, the Panel makes the following finding:
- a) That the Complainant has failed to establish a right to a trade mark or service mark which the Complainant claims the domain name [www.nikon.my](http://www.nikon.my) is identical or similar to;
  - b) That the domain name [www.nikon.my](http://www.nikon.my) is confusingly similar to the trademark NIKON;
  - c) That the Respondent had registered the Domain Name [www.nikon.my](http://www.nikon.my) in bad faith.
- 10.2. Based on the foregoing, the Complaint is denied.

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Khoo Guan Huat  
Sole Panellist  
12 June 2008