



## ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

— ADNDRC is a charitable institution limited by guarantee registered in Hong Kong

### Decision Submission

English Print

Decision ID DE-0700092  
 Case ID HK-0600105  
 Disputed Domain Name www.爱立信.com  
 Case Administrator Dennis CAI  
 Submitted By Guangliang Tang  
 Participated Panelist

Date of Decision 12-02-2007

### The Parties Information

**Claimant** Telefonaktiebola. LM Ericsson  
**Respondent** Henry S.C. Chiu

### Procedural History

The Complaint was filed with the Asian Domain Name Dispute Resolution Centre (the “Center”) on October 12, 2006, which was confirmed by the Center on November 7, 2006 as the Complainant had qualified all the requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the Centre’s Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”). On November 14, 2006, the Center transmitted by email to Name.Com LLC. (the Registrar of the domain name) a request for registrar verification in connection with the domain name at issue. In accordance with the Rules, paragraphs 2(a) and 4(a), the Center transmitted the complaint to the Respondent on November 21, 2006, while the Notifications of Commencement of proceedings were notified to the Parties, ICANN and the Registrar on the same date. On December 8, 2006, the Respondent sent an email to the Center, requesting a deadline postpone on the ground of his disease. On December 22, 2006, the Center notified the parties that, in view of the circumstances and in accordance with Article 5(d) of the Rules, the Center agreed to extend the due date for the Respondent to submit the Response to December 28, 2006. Within the postponed period of due time, the Respondent submitted the Response to the Center.

As both the Complainant and the Respondent elected one Panelist to decide the case, The Center appointed Tang Guangliang as the sole panelist on January 24, 2007, based on the Panelist’s declaration of impartiality and independence on January 7, 2007. Then the Center transferred all the case materials to the Panel on January 24, 2007, and asked the Panel to submit a decision before February 7, 2007.

### Factual Background

#### For Claimant

According to the statements in the Complaint, The Complainant was incorporated in Sweden in the year 1876 and has provided telecommunication equipments and the related communication services worldwide for more than 130 years. From manufacturing telephone exchanges in the early periods, the Complainant has now developed into the world leading provider of telecommunication equipments and end-to-end solutions for all major mobile communication standards. Over 1,000 networks in 140 countries utilize the Complainant’s network equipment and 40 percent of all mobile calls are made through their systems. The Complainant is the major manufacturer of all major 2-G and 3-G mobile communication equipments in the world.

As a world famous provider of telecommunication equipments and related services, the Complainant has a large number of registrations and applications around the world for the mark “ERICSSON” and other trademarks containing

“ERICSSON” , of which “爱立信” is the corresponding Chinese characters in simplified Chinese style.

In this case, the Complainant empowered Wilkinson & Grist as the authorized representative.

### For Respondent

The Respondent is a natural person by the name of Henry S.C. Chiu, the address of whom is 200 Garfield Ave, Alhambra, CA 91801, USA, whose telephone number is 001-6262818826, and the Email address is as follow: 9333@9333.com. No representative for the Respondent has been empowered in this case.

### Parties' Contentions

#### Claimant

The assertions of the Complainant includes—

1. The domain names are identical or confusingly similar to the trademarks in which the Complainant has rights, namely “ERICSSON” and “爱立信” . The detailed reasons for the assertion includes--
  - (a) The Complainant is the proprietor of the trademarks and trade names “ERICSSON” and “爱立信” under which the Complainant provides telecommunication equipments and the related communication services worldwide for over 130 years.
  - (b) The Complainant has a large number of registrations and applications around the world for the mark “ERICSSON” and other trademarks containing “ERICSSON” , of which “爱立信” is the corresponding Chinese characters.
  - (c) The Complainant has also obtained registration of “爱立信” as a trademark in Classes 9, 16, 35, 36, 37, 38, 41 and 42 in China, the earliest date of registration being 28 April 1997. In order to prove the existed registration, the Complainant provided a series of copies of the PRC Registration Certificates and Hong Kong trade mark records as Annex B.
  - (d) The Complainant has also received favorable decisions in the complaints against the domain names of “爱立信.中國” ( “爱立信.cn” ) and “ericsson.net.cn” . Copies of the CIETAC’ s Decisions of the administrative proceedings dated 8 September 2006 have been provided as Annex K.
  - (e) The disputed domain name of the Respondent is identical and/or confusingly similar to the Complainant’ s trade names and trademarks “ERICSSON” and “爱立信” and the domain names mentioned above.
2. The Respondent has no rights or legitimate interests in respect of the disputed domain name. Detailed assertions and evidences are as follows--
  - (a) The Respondent is a natural person, who has no connection with “爱立信” or any relationship with the Complainant and the Complainant has not authorized, licensed, endorsed or otherwise permitted the Respondent to use the Complainant’ s trade names/trademarks “ERICSSON” and “爱立信” and/or word confusingly similar thereto whatsoever.
  - (b) The Complainant has prior rights in the “爱立信” trademark which precede the Respondent’ s registration of the disputed domain name. The words “爱立信” are the corresponding Chinese characters of the Complainant’ s trade name/trademark “ERICSSON” , which is the surname of the Complainant’ s founder, Lars Magnus Ericsson, and is not of common usage. The Complainant is well-known on a worldwide basis under the trademark and trade name of “ERICSSON” for high quality telecommunication equipments, and has registered the domain names of “ericsson.cn” and “ericsson.com” to promote the Complainant and its products and telecommunication services to internet users around the world. It is highly likely that the Respondent was aware of the Complainant’ s trademark “爱立信” at the time of registering the disputed domain name.
  - (c) Accordingly, the Respondent does not have any basis upon which he can assert his rights or legitimate interest in the disputed domain name and there cannot be any possible legitimate connection or interest between the Respondent and the disputed domain name.
3. The domain name was registered and is being used in bad faith. Assertions and references in relation with this aspect include--

(a) Registration of the disputed domain name by the Respondent is in bad faith as the Respondent has deliberately chosen domain names which wholly adopt the well-known trade name/trademark of the Complainant. Given the Complainant's reputation and numerous registrations in many countries including China, it is not possible to conceive of a plausible circumstance in which the Respondent would not have been aware of this fact at the time of registration.

(b) The Respondent has registered the disputed domain name “爱立信.com” which consists of the Complainant's trade name/trademark “爱立信” only, thereby preventing the Complainant from reflecting its trade name/trademark in such corresponding domain names.

(c) The Respondent has used the domain name “爱立信.com” to attract internet users to the website “www.chunu.com” which promotes products and services which are totally unconnected with the Complainant's products and services and thereby creates a likelihood of confusion with the Complainant's trade name/ trademark “爱立信” as to the source, sponsorship, affiliation, or endorsement of the website or the services or products promoted on the website. The website “www.chunu.com” is also linked to other pornographic websites with topics such as “Nude celebrity photos, pics, naked free Celeb...”, “Porn for Women”, “Lesbians”, “Sexy ladies”, “Sex”, “Hot Sexy Psychic Readings”, “All Sex Files - Free Sex Movies and Picture G...”, etc. which are likely to ruin the good reputation of the Complainant.

Based on the assertions above, the Complainant sought to have the disputed domain name transferred to the Complainant.

### Respondent

The Respondent categorically rejects the Complainant's legitimacy and repudiates the authenticity of the Complaint, and believes a Response is warranted in light of ADNDRC's commitment to review this case. The detailed assertions of the Respondent includes--

(1) The Complainant is unable to propose any evidence to prove that the Complainant has trademark of Chinese Characters <爱立信> in The United States of America (USA). The Complainant has no trademark of Chinese Characters <爱立信> in USA, and the Complainant never use <爱立信> in USA.

According to the Respondent's opinion, the domain name “爱立信.com” is used in USA, not in China. “爱立信” is merely provided to overseas Chinese and learner of Chinese in USA, which is completely irrelevant with ERICSSON Company. Furthermore, ERICSSON's Chinese name is “易立信” in Taiwan, which is different from “爱立信”. It is obvious that ERICSSON uses “爱立信” only in Mainland China, but not even in Chinese Taiwan, so “爱立信” is located locally only in Mainland China, but the domain name “爱立信” was registered and used in USA.

In the Respondent's view, the Respondent registered Chinese Characters “爱立信”, but not ERICSSON as the domain name, while maybe ERICSSON's English name is famous, but Chinese Characters “爱立信” is not monopolized by ERICSSON Company in all Countries and all sorts of business.

(2) The domain name “爱立信” was registered in The United States of America (USA), which has been owned by the Respondent since June 1, 2004, all details of the Respondent are correct, the Respondent has rights and legitimate interests in respect of the domain name “爱立信.com”.

As the Complainant is unable to propose any evidence to prove that the Complainant has trademark of Chinese Characters “爱立信” in USA, The Complainant has no right to prohibit the Respondent to use “爱立信” to construct a non-profit charity site in USA, because the Complainant has no trademark of Chinese Character “爱立信” in USA, and the Complainant never use “爱立信” in USA.

(3) In Administrative expert group in Telstra Corporation Limited v Nuclear Marshmallows [ WIPO Case No: D2000-0003 ] the Panelist believed that, Policy, paras. 4(a) (iii), the Complainant must prove evidence of Registration and Use in Bad Faith Simultaneously, i.e. the Complainant must prove that the domain name has been registered in bad faith and is being used in bad faith. Two conditions must be satisfied Simultaneously.

The Complainant also must prove three conditions are present Simultaneously, but the Complainant is unable to present any evidence to prove that the domain name was registered and is being used in bad faith. The Complainant only listed some websites which have nothing to do with the Respondent, The Complainant just intends to use a lot of ungrounded and complicated garbles to mislead and confuse ADNDRC's Panels.

(4) “爱立信.com” has been used and is being used to construct a non-profit charity site before any notice to the Respondent of the dispute. “爱立信.com” can be visited, and will be used as a charity site forever. Furthermore, “爱立信.com” is not for sale forever; “爱立信.com” is being used to construct a non-profit charity site; “爱立信.com” is not cooperated with any trademark or company; and the Respondent never tried to sell the domain name

“爱立信.com”。

Based on the assertions above, the Respondent claimed the registration of the disputed domain name be maintained.

### Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

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

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.

### Identical / Confusingly Similar

The Complainant has the burden to prove that the domain name in dispute is identical to or confusingly similar to the registered mark “爱立信”，while the Respondent has the right to deny any and all the assertions and evidences provided by the Complainant.

The Panel finds that, in ANNEX B, the Complainant has proved the existence of registered trademark “爱立信” in the PRC, and the identical characteristic of the disputed domain name with the registered trademark. But according to the Respondent's allegation, the domain name was registered in the USA, where the Complainant had no trademark “爱立信” been registered and used at all. As the conclusion, the Respondent believes that the Complainant has no right to contradict his domain name registered and being used in the USA.

The Panel doesn't agree with the Respondent. In the three requirements of Paragraph 4(a)(i) of the Policy, the Complainant needs only to prove the existence of a trade mark or a service mark, based either on registration or bona fide use, no matter if it exists in the same country where the disputed domain name was registered, because a domain name is effective all over the Internet and the world. The only fact that the domain name is registered and used in the USA, while the trade mark is registered and used in the PRC is not enough for the Respondent to deny his liability set by the Policy.

For the following reasons, the Panel finds that the disputed domain name is identical with the trademark “爱立信”：

1. “爱立信” is a registered and distinctive trade mark and widely used trade name, but not a descriptive or generic term;
2. the disputed domain name has no difference with “爱立信”。

### Rights and Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to prove that the Respondent has no right or legitimate interest in the disputed domain name. However, it is consensus view among Panelists that if the Complainant makes out a prima facie case that the Respondent has no rights or legitimate interests, and the Respondent fails to show one of the three circumstances under Paragraph 4(c) of the Policy, then the Respondent may lack a legitimate interest in the domain name. See *Société pour l' Oeuvre et la Mémoire d' Antoine de Saint Exupéry - Succession Saint Exupéry - D' Agay v. Perlegos Properties*, Case No. D2005-1085.

As the Complainant announced in the complaint, and the Panel finds that the Respondent has no connection with the Complainant whatsoever. The Complainant has not authorised, licensed or otherwise permitted the Respondent to use the trademark “爱立信”。Accordingly, the Respondent does not have any basis upon which he can assert his rights or legitimate interest in the disputed domain name and there cannot be any possible legitimate connection or interest between the Respondent and the disputed domain name.

The Panels finds that a prima facie case has been made out by the Complainant. The burden of going forward with the evidence shifts to the Respondent.

The Respondent asserted that the domain name “爱立信.com” was registered in The United States of America (USA) by the Respondent since June 1, 2004, and all details of the whom are correct. Based on such a fact, the Respondent has rights and legitimate interests in respect of the domain name “爱立信.com”。

Paragraph 4(c) provides 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 your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii): (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 Panel finds no meeting between the Respondent asserted position and the requirements above. For this reason, the Panel concludes that the Complaint has satisfied the requirement of Paragraph 4(a)(ii) of the Policy.

### Bad Faith

Paragraph 4 (b) of the Policy provides that, for the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(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.

The onus of proof is on the Complainant to make the Panel believe that one of the circumstances exists or otherwise there is bad faith in the registration and use of the domain name in dispute.

The Complainant asserted that, as the Respondent has deliberately chosen domain names which wholly adopt the well-known trade name/trademark of the Complainant, the Respondent has registered the disputed domain name in bad faith. The Complainant believed that, given the Complainant's reputation and numerous registrations in many countries including China, it is not possible to conceive of a plausible circumstance in which the Respondent would not have been aware of this fact at the time of registration.

To the Complainant's view, the Respondent has registered the disputed domain name “爱立信.com” which consists of the Complainant's trade name/trademark “爱立信” only, thereby preventing the Complainant from reflecting its trade name/trademark in such corresponding domain names.

The Complainant presented pages of printouts of the website “www.chunu.com” which promotes products and services totally unconnected with the Complainant's products and services, seems to prove that those webpages are of the same website of “www.爱立信.com”. The printouts reveal that, the website “www.chunu.com” is linked to other pornographic websites with topics such as “Nude celebrity photos, pics, naked free Celeb...”, “Porn for Women”, “Lesbians”, “Sexy ladies”, “Sex”, “Hot Sexy Psychic Readings”, “All Sex Files - Free Sex Movies and Picture G...”, etc. The Complainant avers that those kinds of pictures and text are likely to ruin the good reputation of the Complainant.

The Respondent strongly opposed the assertions above, and claimed the Complainant must prove evidence of Registration and Use in Bad Faith Simultaneously, i.e. the Complainant must prove that the domain name has been registered in bad faith and is being used in bad faith. Two conditions must be satisfied Simultaneously.

The Respondent stressed that the Complainant is unable to present any evidence to prove that the domain name was registered and is being used in bad faith. The Complainant only listed some websites which have nothing to do with the Respondent, The Complainant just intends to use a lot of ungrounded and complicated garbles to mislead and confuse ADNDRC's Panels.

Although the Panel has not found any direct relation between the website www.chunu.com and www.爱立信.com based on the Complainant's evidences, the Panel does not agree with the Respondent about the conclusion of bad faith.

Considering that the Complainant's trademark and trade name have been widely used in China where has the world's biggest population, and the de facto world-wide influences acquired by the mark “爱立信” via Internet and other mass

media, the Panel comes to the conclusion that the Respondent has no reasonable ground to register the disputed domain name.

According to the Respondent' s assertion, the disputed domain name was registered since June 1, 2004, but has not been normally used up to present. The Panel concludes that, as the Policy has not limited situations of bad faith within Paragraph 4(b), the abnormal use of a wrongfully-registered domain name should be regarded as one of the bad-faith use.

The Panel finds that the domain name has been registered and is being used in bad faith. The requirements under Paragraph 4(a)(iii) are met.

#### Status

www.爱立信.com

Domain Name Transfer

#### Decision

Pursuant to Paragraph 4(a) of the Policy and Article 15 of the Rules, this Panel orders that the domain name “爱立信.com” be transferred to the Complainant.

[Back](#)[Print](#)