



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

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### Decision Submission

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Version  
Decision ID DE-0800174  
Case ID HK-0800174  
Disputed Domain Name www.长江.net  
Case Administrator Dennis CAI  
Submitted By Hong Xue  
Participated Panelist

Date of Decision 17-11-2008

Language Version : English

#### The Parties Information

**Claimant** Cheung Kong (Holdings) Limited  
**Respondent** Tiza Dustin Hill

#### Procedural History

On 30 July 2008, the Complainant submitted its Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the "Centre"), in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on August 26, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules"), and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules").

On 15 August 2008, the Centre confirmed the receipt of the Complaint. To confirm the registration information, the Centre forwarded a copy of the Complaint, on 16 August 2008 and 1 September 2008 respectively, to the Registrar spot Domain LLC DBA Domainsite.com.

On 3 September 2008, the Centre received the Registrar's confirmation of registration information of the domain name in dispute.

On 25 September 2008, the Centre notified the Complainant that the Complaint had been confirmed and forwarded, and; the Centre notified the Respondent, the Registrar and the ICANN of the commencement of the case proceeding.

On 9 October 2008, the Centre received the Response and forwarded to the Complainant.

On 10 October 2008, the Centre informed the Complainant and the Respondent of the appointment of Ms. Hong Xue as the Sole Panelist, and transferred the case file to the Panelist by email. Due to document delivery difficulty, the Centre decided that the decision shall be submitted by 15 November 2008.

The Panel finds that it was properly constituted and appointed in accordance with the Rules and the ADNDRC Supplemental Rules.

The Panel does not receive any further requests from the Complainant or the Respondent regarding other submissions, waivers or extensions of deadlines.

The language of the proceeding is English, as being the language of the Domain Name Registration and Service Agreement, pursuant to paragraph 11(a) of the Rules, and also in consideration of the fact that there is no express agreement to the contrary by the Parties.

## Factual Background

### For Claimant

The Complainant was established on 8 June 1971. Since 1972, the Complainant has been trading and providing services under the service mark and trade name “Cheung Kong Holdings” / “长江实业”. “长江” is used as the most distinctive part of the service mark/trade name of the Complainant.

### For Respondent

The Respondent registered the domain name in dispute “长江.net” on 21 March 2004.

## Parties' Contentions

### Claimant

The Disputed Domain Name is identical or confusingly similar to trademarks or service marks to which the Complainant has rights.

The Complainant, Cheung Kong (Holdings) Limited ( “长江实业(集团)有限公司” ), formerly known as Cheung Kong Real Estate Company Limited / Cheung Kong Real Estate & Investment Company Limited (長江地產有限公司), is the flagship of the Cheung Kong Group ( “长江集团” ), the leading Hong Kong based multinational conglomerate. (See Exhibit 3: Copy Certificate of Incorporation of the Complainant and Exhibit 4: Copy Certificate of Change of Name of the Complainant).

“长江” is not only the service marks/trade names adopted by many companies within the Cheung Kong Group ( “长江集团” ) of which the Complainant forms part, it is also the most distinctive part of the service mark/trade name of the Complainant. The Complainant claims rights in the service marks “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English namely, “Cheung Kong Holdings”, “Cheung Kong Group” and “Cheung Kong”. Exhibit 10 are copies of annual report published by the Complainant from the year 1997 to 2006 showing extensive use of “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English as service marks/trade names of the Complainant and the Cheung Kong Group.

Based on the above, the service marks/trade names “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English namely, “Cheung Kong Holdings”, “Cheung Kong Group” and “Cheung Kong” have been well-recognized by the public and trade to be distinctive of and identified with the Complainant and the Cheung Kong Group but none other. Substantial goodwill and reputation has subsisted in the service marks/trade names “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English. One can also find countless publications and reports on the internet about the Complainant and Cheung Kong Group by reference to the service marks/trade names “长江实业”, “长江集团” and “长江” (See Exhibit 11: random collection of printouts of such articles published on the Internet). As such, the Complainant undoubtedly has rights in these service marks/trade names and their corresponding marks/names in English.

Further, as early as 13 December 1995, the Complainant has already registered the domain name “cheungkong.com”. On 1 February 2000, the Complainant further registered the domain name “cheungkongholdings.com”, “cheungkongholdings.net” and “cheungkongholdings.org” (Exhibit 12 are particulars of such domain name registrations).

The major part of the Disputed Domain Name “长江” is :-

- i) identical to the major portion of the service marks/trade names of the Complainant and its group of companies;
- ii) the Chinese translation of the major part of “Cheung Kong Holdings”, “Cheung Kong Group” and “Cheung Kong”; and
- iii) the Chinese translation of the major portion of the Complainant domain names “cheungkong.com” “cheungkongholdings.com”, “cheungkongholdings.net” and “cheungkongholdings.org”.

The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Respondent is not in any way related to the Complainant, nor was the Respondent authorised by the Complainant to use the mark “长江”.

On or before the registration date of the Disputed Domain Name i.e. 21 March 2004: -

The Complainant and the Cheung Kong Group have widely used “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English namely, “Cheung Kong Holdings”, “Cheung Kong Group” and “Cheung Kong” as

service marks/trade names;

Substantial goodwill and reputation subsisted in the service marks “长江实业”，“长江集团” and “长江,and their corresponding marks/names in English” ;

The service marks/trade names “长江实业”，“长江集团” and “长江”，and their corresponding marks/names in English have been identified by the public as the service marks/trade names of the Complainant and the Cheung Kong Group and none other; and

The Complainant has registered the domain names “cheungkong.com”，“cheungkongholdings.com”，“cheungkongholdings.net” and “cheungkongholdings.org” .

As such, the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Disputed Domain Name has been registered and is being used in bad faith

Service marks/trade names “长江实业”，“长江集团” and “长江”，and their corresponding marks/names in English namely, “Cheung Kong Holdings”，“Cheung Kong Group” and “Cheung Kong” have been used by the Complainant and the Cheung Kong Group in Hong Kong and China respectively for more than 30 and 10 years before the registration date of the Disputed Domain Name. All these service marks/trade names have very strong reputation in Hong Kong and China. Undoubtedly, the Complainant and the Cheung Kong Group have prior rights in the service marks/trade names “长江实业”，“长江集团” and “长江”，and their corresponding marks/names in English. As such, it could not be a coincidence for the Respondent to register a domain name which is identical to the most distinctive portion of the service marks/trade names and/or which is a Chinese translation of the most distinctive portion of the English service marks/trade names of the Complainant and the Cheung Kong Group taking into account that the Respondent has never had any rights or legitimate interests in the said marks/names. It is believed that the Respondent registered the Disputed Domain Name in order to confuse the public that the Respondent’s act in registering the Disputed Domain Name authorized by the Complainant. It is clear that the Respondent had acted in bad faith when it made the application for the registration of the Disputed Domain Name in 2004.

Further, since the registration of the Disputed Domain Name, the Respondent has not put the same into active use but is merely linked to a webpage providing information on Yangtze River (See Exhibit 13). This indicates that the registration of the Disputed Domain Name has no purpose other than to create confusion that such registration is endorsed by the Complainant.

Complainant requests that the domain name be transferred from Respondent to Complainant.

### Respondent

In late May or early June 2007 I became interested in creating a web site about the Yangtze River (长江) and my travels in that region of China. At that time the domain name, 长江.net and 长江.com was already registered.

I contacted the registrants of both domain names and explained my desire to use the domain name to create a web site about my travels near the 长江 (Yangtze River). The individual who had registered 长江.net agreed to transfer the domain to me. Therefore, June 2007 is when I became the registrant of 长江.net. Not in 2004 as stated by the Complainant.

A search for 长江 in Google and most other search engines will not generally result in information about the complainant, but about a long river that is in China and name 长江.

I have registered this domain name because I love traveling in China and enjoyed many adventures near the Yangtze river. My goal is to build a web site on this domain with my pictures and stories related to the Yangtze river.

My family history in Hong Kong and China began with my mother's travels to the region in 1984. Since that time she has traveled to China on average 3 times per year. I began joining her on these travels in my teen years during the 1990s. I immediately fell in love with China.

In the year 2000 I spent 5 months living in Beijing and traveling the rest of China. I made several trips to China after that time and again lived in Hong Kong China for 6 months in 2004. While in Hong Kong in 2004 I studied law at the City University of Hong Kong. In conjunction with my studies I worked an internship at the Hong Kong Intellectual Property department under a great man who taught me a lot about law and life. I also spent much of my free time traveling.

After living in Hong Kong in 2004 I moved back to the USA to complete my US Juris Doctor of Law. I then returned to China to live in Beijing and attend Tsinghua University. In June 2006 I graduated Tsinghua with a Masters of Chinese law degree.

I am quite busy these days, but will eventually share my Yangtze River experiences on this web site. For now you can see some of my other China adventures at [www.dustyhill.us/friends](http://www.dustyhill.us/friends).

The Complainant has not demonstrated that 长江.net is confusingly similar to their trademark. They have only said that it is. The obvious truth is that if you asked the average person in China or the world what comes to mind when thinking of 长江, everyone would say the river in China. Google and other major search engines would also agree. Doing a search for 长江 will result in thousands of images of the river in China and numerous pages about the river in China. The Complainant's trademark has only been around for a very short time in comparison to the River in China.

The Respondent has a legitimate right and interests in respect to the domain name 长江.net. The right and interest is to build a web site that is in no way related to the Complainant's business or trademarks. As demonstrated in Complainant's Exhibit 13 or by visiting the domain name in question, the site is only being used as an informational and personal web site related to the 长江 (Yangtze river) in China. There is no doubt numerous legitimate interests exist in 长江.net that do not have any relation to the Complainant's trademark or business. The Complainant has not provided even one piece of proof that the Respondent is using the name for any purpose other than information about the river in China.

There is not one piece of evidence put forth by the Complainant that demonstrates bad faith on the part of the Respondent. There has never been any attempt by the Respondent to sell, rent or profit off the domain name 长江.net. The Complainant has not provided one item of evidence showing the Respondent has engaged in a pattern of conduct that prevents trademark holders from reflecting corresponding domain names. The Complainant has not provided evidence that the Respondent has the purpose of disrupting the business of a competitor. The Complainant has not demonstrated any evidence that the Respondent has attempted to attract Internet users for personal gain by creating confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement. Exhibit 1 (Attached) shows the current contents of the domain name in question and also makes clear the intended use by the Respondent. It is not and never has been in bad faith. The complainant stated, "(l) On or before registration date of the Disputed Domain Name i.e. 21 March 2004"; In fact the Respondent became the registrant in June 2007.

The Complainant stated, "(n)...it could not be a coincidence for the Respondent to register a domain name which is identical to the most distinctive portion of the service marks/trade names and/or which is a Chinese translation of the most distinctive portion of the English service marks/trade names of the Complainant and the Cheung Kong Group taking into account that the Respondent has never had any rights or legitimate interests in the said marks/names. It is believed that the Respondent registered the Disputed Domain Name in order to confuse the public that the Respondent's act in registering the Disputed Domain Name authorized by the Complainant. It is clear that the Respondent had acted in bad faith when it made the application for the registration of the Disputed Domain Name in 2004."

In Fact, the Respondent did not know who the Complainant was until the Complainant began sending threatening emails to the Respondent in 2008. Therefore it is not even possible that the Respondent became the registrant with the purpose described by the Complainant. A reasonable person would also imagine that the Respondent became the registrant with the river in China in mind.

The Complainant stated, "(o) Further, since the registration of the Disputed Domain Name, the Respondent has not put the same into active use but is merely linked to a webpage providing information on Yangtze River...This indicates that the registration of the Disputed Domain Name has no purpose other than to create confusion that such registration is endorsed by the Complainant."

The Complainant does not argue with any reasonable logic. The first statement does not lead to the next. The fact that the Respondent has only just began to build a web page related to the river in China does not lead a logical mind to conclude that the purpose of registration of the domain was to create confusion with the Complainant business or that the Complainant has endorsed the web site. It actually does the opposite. It demonstrates that the site is meant to be about a river in China.

Respondent certifies that the information contained in this Response is to the best of Respondent's knowledge complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

The Respondent requests the Complaint to be dismissed and the Complainant's requested remedies denied.

## Findings

Under the paragraph 4 (a) of the Policy, a domain name holder is required to submit to a mandatory administrative proceeding in

the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that

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

In the administrative proceeding, the complainant must prove each of these three elements present.

### Identical / Confusingly Similar

Pursuant to paragraph 4(a) (i) of the Policy, a complainant must prove that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. The domain name in dispute is <长江.net>. Apart from the gTLD suffix ".net" that has no relevant distinguishing function, the domain name registered by the Respondent is “长江”.

The Complainant claims that “长江” is the distinctive part of both its trade name and service mark. Since a dispute between a trade name and a domain name is not within the scope of proceeding of the Policy, the Panel does not consider the Complainant's claim concerning the trade name.

With respect to the claim on common law right in the service mark, the Panel finds that the Complainant is able to prove that “长江” has been and is being extensively and consistently used by the Complainant in the businesses and publicities. Although “长江”, per se, is not a registered service mark of the Complainant, it has become a mark that is connected to the Complainant's businesses through use. Hong Kong Special Administrative Region of the People's Republic of China is a common law jurisdiction. Common law rights in a trade/service mark are recognized and protected. Therefore, the Complainant has successfully proved that it has right in the mark “长江”.

Given that the disputed domain name “长江.net” is identical to the mark in which the Complainant has the common law right, the Panel finds that the paragraph 4(a)(i) of the Policy is proven by the Complaint.

### Rights and Legitimate Interests

The Complaint asserts that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent rejects the Complainant's assertions and contends that the disputed domain name was registered under the name of the Chinese Yangtze River without envisaging any relevance to the Complainant and is being used for an informational website on that River. The Panel reviews the submissions of both parties and has the following discoveries: Both the disputed domain name and Complainant mark coincide with the name of the longest Chinese river—“长江”, which is called Yangtze River in English. “长江” in its plain meaning refers to the River exclusively. Without any other specific reference or connotation, “长江” means nothing but the name of the River. Although the Complainant has established the common law right in the mark “长江”, it cannot and should not deprive the others from using the River's name normally. The right that the Complainant can assert in the mark “长江” is linked to its businesses and services on which the mark is used. The Complainant is, by no means, entitled to claim any monopoly over the River name “长江” per se.

According to the paragraph 4(c) (iii) of the Policy, a respondent may demonstrate its right and legitimate interest in the disputed domain name through proving that it is 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. A list of decisions made under the Policy have shown that if a respondent is using a generic word's original meaning without intending to take advantage of complainant's rights in that word, then it has a legitimate interest (see Allocation Network GmbH v. Steve Gregory, WIPO Case No. D2000-0016; Asphalt Research Technology, Inc. v. National Press & Publishing, Inc., WIPO Case No. D2000-1005). In the present case, the disputed domain name is being used for a website providing the information of Yangtze River. If any Internet user is attracted by the River name in the domain name to visit the website that is genuinely presenting information of the River, the domain name is apparently not misleading and will not cause either initial or subsequent confusion. Since there is no evident that the Respondent has any commercial gains through the use of the domain name, the Respondent should have right or legitimate interest to make such noncommercial use legitimately.

The Panel, therefore, finds that the Complainant fails to prove the paragraph 4(a)(ii) of the Policy.

### Bad Faith

Given that the Complainant does not successfully prove the paragraph 4(a) (ii) of the Policy, the Complaint is not likely to prove all three elements required by the paragraph 4 (a) of the policy. The Panel finds that it is not necessary to discuss whether the Respondent has bad faith in registration and use of the domain name.

**Status**

www.长江.net

Complaint Rejected

**Decision**

The Complainant is not able to establish each of the three requirements set forth in the Policy paragraph 4(a). In accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel therefore dismisses the Complaint.

Sole Panelist: Hong Xue

Dated: 15 November 2008