



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

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(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

In the Matter of an Appeal under the ICANN Registrar Transfer Dispute Resolution Policy

Case No.:	HKT-1100004
Appellant:	Web Commerce Communications Limited
Appellee:	ENOM, Inc.

1. The Parties and concerned Domain Name

The Appellant is Web Commerce Communications Limited, of Lot 2-2, Incubator 1 Technology Park, Malaysia 57000 Kuala Lumpur, Malaysia.

The Appellee is ENOM, Inc., of 15801 NE 24th Street, Bellevue, WA 98008, United States of America.

The domain name at issue is <268888.com>.

2. The Appeal

This case concerns an Appeal to the Asian Domain Name Dispute Resolution Centre (the “Dispute Resolution Provider”) under the ICANN Registrar Transfer Dispute Resolution Policy of 12 July 2004 (the “Policy”) against the finding of “no decision” dated May 18, 2011 by VeriSign, Inc. (the “Registry Operator”) in a Request for Enforcement (the “RFE”), being case # 45242.

The Dispute Resolution Provider has on November 12, 2004 adopted Supplemental Rules to the Policy (“Rules”).

The Dispute Resolution Provider appointed Debrett G. Lyons as the Dispute Resolution Panel (the “Panel”) on June 21, 2011. Under the Rules, the Panel finds that it was properly constituted and certifies that it has acted independently and impartially and to the best of its knowledge has no known conflict in serving in this proceeding.

3. Factual background

An appeal from a so-called “first-level dispute” decision on a RFE was filed with the Hong Kong Office of the Dispute Resolution Provider on June 2, 2011 under the Policy. The outcome of the RFE had been a finding on May 18, 2011 by the Registry Operator of “no decision” in case # 45242.

The domain name at issue is <268888.com>. For the purposes of the Decision which follows, the statements and allegations made in the RFE are reiterated in the Appeal.

It is said that in March 2011 the original registrant of the domain name, Liu Jinsheng, reported an irregularity with the registration and after investigation it was found that the domain name had been transferred from the Appellant (described in the papers and defined in the Policy as the “Losing Registrar”) to a new registrar by the name of 1API GmbH and then later again transferred to the Appellee.

Both the RFE and the Appeal briefs describe the circumstances of the transfers in detail. The briefs refer to the alleged wrongful transfer of some 31 domain names, including <268888.com>, away from the Appellant in what would appear to have been a covert exercise by an unknown third party. The Appeal brief summarizes the matter this way:

“The Agent account had been hacked into and the Agent email address along with customer email addresses were then changed without the consent of Administrative Contact and the Original Registrants. Hackers used the modified email addresses to do transfer operation. So, the related domain name was transferred without the real authorization of Administrative Contact and the Original Registrant.”

It is said that the Agent and the original registrants reported the matter to the police but the case could not be prosecuted because “the related Registrar Server was abroad”.

The Appellee was not a party to the RFE which named an individual, Liu Jinsheng, as the claimant and original registrant of the domain name. The RFE names the Appellant in this case as the respondent. The RFE appears then as a matter between Liu and the Appellant.

On May 18, 2011, the Registry Operator made its findings and wrote: “Please be advised that VeriSign has completed its review of request for Enforcement Case #45242 and is unable to render a decision in favor of either party based on the information provided.”

4. The Administrative Framework

The Policy provides for a so-called First-Level resolution process whereby a registrar may choose to file a dispute directly with the relevant registry operator. Any decisions made by the registry operator may, within 14 days, be appealed to a dispute resolution provider. A finding of “no decision” by a registry operator may

be appealed to a dispute resolution provider in the same manner as a decision against a registrar. The Policy states that in either case, the document submitted by the registrar to the dispute resolution provider shall be referred to as an "Appeal." The Policy states that the dispute resolution panel shall review each Appeal on a De Novo basis.

5. Decision

The Panel decides that the Registry Operator's May 18, 2011 finding in RFE Case #45242 that it was "unable to render a decision in favor of either party" to be a finding of "no decision" for the purposes of the Policy.

The Appellant has submitted an appeal from the Registry Operator's decision to the Dispute Resolution Provider. Paragraph 4.3.4 of the Policy provides that: "The Appellant shall submit the Appeal in electronic form and shall: ... (vi) State the basis for such appeal, including specific responses to the findings of the Registry Operator in the First-Level Dispute process." The Panel finds in the circumstances that the Appellant's essential restatement of the RFE brief is compliant with paragraph 4.3.4(vi) of the Policy.

However, the primary concern of the Panel in this case is not with the substantive claims of an illegitimate and unauthorized transfer of the domain name away from the Appellant, but with the more fundamental issue of whether the Appeal has been properly instituted and whether the Panel has proper jurisdiction to decide the Appeal.

Paragraph 4.3.8 (i) of the Policy provides that "The Dispute Resolution Panel may submit questions to the Registry, the Appellant or Appellee." In the case the Panel took advantage of that power to submit to the Appellant the following observations and questions arising from the Appeal.

"Paragraph 3.1.1 of the Policy provides that: "Either the Gaining or Registrar of Record ("Filing Registrar") may submit a Request for Enforcement."

The Request for Enforcement which gave rise to this Appeal was brought by Liu Jinsheng.

Liu Jinsheng was not the Gaining or Registrar of Record ("Filing Registrar") in the transactions of record but was described in the Request for Enforcement as Claimant (Original Registrant). There is no provision in the Policy for a Request for Enforcement to be brought by a Registrant.

QUESTION 1

How can it be said that the Request for Enforcement was validly brought?

QUESTION 2

How can it be said that a purported Appeal from such a Request is validly brought?

QUESTION 3

Is there a response to the Appeal from Enom Inc. ?”

In proper compliance with paragraph 4.3.8 (ii) of the Policy, the Appellant provided the following replies to those questions within 7 days of their receipt:

“QUESTION 1

How can it be said that the Request for Enforcement was validly brought?

The Request for Enforcement was submitted by us, WebNIC, as the registrar of record, in receiving the claim by Liu Jinsheng whose domain name was transferred out without his acknowledgement by a false authorization which provided the authcode for the transfer process between registrars. The transfer was not a valid request; Liu Jinsheng has provided documents to prove his identity, and the ownership over the domain 268888.com.

QUESTION 2

How can it be said that a purported Appeal from such a Request is validly brought?

Further to question 1, we received notification of the decision rendered on Request for Enforcement Case # 45242 for domain 268888.com is No Decision. The decision is not in the favor of the registrant Liu Jinsheng, thus, WebNIC submitted the appeal as per the registrant, Liu Jinsheng request and to favor the rights and interest of the registrant, Liu Jinsheng.

QUESTION 3

Is there a response to the Appeal from Enom Inc. ?

We have not received any response from Enom Inc. regarding the appeal. Except that we did contact Enom Inc. before the Request for Enforcement was filed.”

Consistent with the Appellant’s answer to Question 3, there is nothing in the material provided to the Panel by the Dispute Resolution Provider which would indicate that the Appellee responded to the Appeal in any way and so there is nothing else which might assist the Panel in understanding the matter beyond these answers and the information contained in the material provided to the Panel by the Dispute Resolution Provider.

The Appellant is proceeding in the belief that it is a non-prevailing Registrar in a First-Level dispute proceeding. The Appellant is named in the RFE as the “Original Registrar (Losing Registrar)”. On the information made available to the Panel the Appellant was the respondent in the RFE. The RFE states on its face that the party bringing the RFE was Liu, who is also described as both the “Claimant” and the “Original Registrant”.

According to paragraph 3.1.1 of the Policy, either the Gaining or Registrar of Record (“Filing Registrar”) may submit a RFE. The Appeal and RFE briefs state

that (at least initially) 1API GmbH was the Gaining or Registrar of Record. The party named as the claimant in the First Level dispute was not that Registrar (nor a registrar at all). On its face, the RFE was initiated by a party who had no standing to do so under the Policy.

The answers to Questions 1 and 2 are ambiguous. The Appellant states that it submitted the RFE as “the registrar of record, in receiving the claim by Liu Jinsheng whose domain name was transferred out without his acknowledgement by a false authorization ... Liu Jinsheng has provided documents to prove his identity, and the ownership over the domain 268888.com.” Further, the Appellant states that since there was no decision in favour of Liu in the First-Level dispute, it “submitted the appeal as per the registrant, Liu Jinsheng request and to favor the rights and interest of the registrant, Liu Jinsheng.”

It is not clear from these answers whether Liu himself initiated the RFE. On one reading, it might be the case that the Appellant itself filed the RFE, naming Liu as the Claimant (and in doing so, misconceiving the Policy) and naming itself as Respondent. It would seem, for example, from the copy of the RFE provided to the Panel that it was signed by, or on behalf of, the Appellant and not by Liu.

In either case, the Panel’s conclusion on the facts submitted to it is that the Panel has no jurisdiction to consider the Appeal. The Appeal was not properly initiated since there can only be an appeal from a proper First-Level dispute and in this case there was no such First-Level dispute. That dispute was either not brought by a registrar at all, or not brought by a registrar in accordance with the Policy.

For the foregoing reasons the Appeal is refused.

Debrett G. Lyons
Panelist

Dated: August 31, 2011