



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

English Print

Decision ID	DE-0700120
Case ID	CN-0700134
Disputed Domain Name	www.cqtv.com
Case Administrator	jinxi
Submitted By	Ping Zhang
Participated Panelist	

Date of Decision	27-07-2007
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The Parties Information

Claimant	Chongqing Broadcasting Group
Respondent	Qi Zhong Yan

Procedural History

The Complaint was filed with the ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE(the "Center") on April 12, 2007. On April 29, 2007, the Registrar transmitted to the Center its verification response confirming that the Respondent is listed as the registrant. On April 29, 2007, the Center transmitted claims to Respondent. On April 30, 2007, the Center sent notification for language correction of complaint. The language of the proceedings shall be English.

On May 22, 2007, the Center sent notification of the commencement of the proceedings notifying the claims have been confirmed and forwarded and notified ICANN and the Registrar. On June 11,2007, the Center sent notification of response deadline extension. On June 18,2007, the Center received the response from the Respondent.

On June 20,2007, the Center sent notification for selection of Panelist, asking the parties to determine their order of preference for the five proposed panelists.

On June 22,2007, the Center sent confirmation of the appointment of the Panelist according to the parties preference. At the Panelist' s demand and according to ADNDRC Supplemental Rules to ICANN Uniform Domain Name Dispute Resolution Policy Article 10(2), the Center granted an extension for the submission of the final decision to July 20, 2007. The Administrative Panel shall issue its decision based on the Complaint, the Response, supplementary materials, the Policy, the Rules, and the Supplemental Rules.

Factual Background

For Claimant

The full name of the Complainant is “Chongqing Broadcasting Group” , which also retains the name of Chongqing Television, or “cqtv” in short.

Chongqing Broadcasting Group was officially established on November 18, 2004. It is made up of the former nine organizations, i.e., Chongqing People’ s Radio, Chongqing Television, Chongqing Economic Radio, Chongqing Communications Radio, Chongqing Music Radio, Chongqing Metropolitan Radio, Chongqing Education Radio, Chongqing Correspondence Teaching Center of Beijing Broadcasting Institute, and Chongqing Audio & Visual Library, which were cancelled as independent establishments and incorporated into Chongqing Broadcasting Group. Among these nine organizations, the former names of Chongqing People’ s Radio and Chongqing Television remain unchanged.

Chongqing Television was founded in 1981.

The Complainant registered the domain name cqtv.com.cn on July 21, 1998 and registered another domain name ccqtv.com at XINNET TECHNOLOGY CORPORATION on July 28, 1998. Both domain names are directed, on the Internet, to the website of Chongqing Broadcasting Group.

For Respondent

The Respondent is Qi Zhong Yan. No detailed material is provided about the Respondents' business activities, apart from the information mentioned below under 3.

Parties' Contentions

Claimant

a. This Complaint is based on the following grounds:

The disputed domain name, cqtv.com, is extremely similar to the name, cqtv, which the Complainant has used in China for many years on end. Since the case sensitivity of English letters won't affect the belonging of the trademark right, the domain name, cqtv.com, infringes upon the exclusive trademark right of the Complainant. Moreover, the Complainant used the name, cqtv, far earlier than the Respondent, and the Complainant's use of cqtv has a wider influence than that of the Respondent.

The Respondent does not have any registered trademark right to "cqtv" or other justifiable, legal rights to "cqtv". "cqtv" has always been an important trademark of the Complainant, and has been widely used by the Complainant. Besides, the Complainant has put in a lot of money for the publicity and promotion of its brand and products. The Respondent and the Complainant do not have any form of business relations, and the Complainant also has not authorized, in any form, the Respondent to use its registered trademark cqtv. According to Section 1.3 of the Several Questions on the Application of Law in Trial of Trademark Civil Dispute Cases Interpretation, to register a domain name identical with or similar to the registered trademark of others and conduct e-business in relevant commodities through the domain name may easily cause public confusion and is thus regarded, according to the stipulations of Article 52.5 of the Trademark Law, as an act infringing upon the exclusive trademark right of others.

The Complainant registered the domain name, cqtv.com.cn, at a domain name registration service provider on July 21, 1998

On March 1 and April 11, 2007, after finding that the disputed domain name had been registered by the Respondent, the Complainant contacted the Respondent according to the contact information stored in the database of www.net.cn (Name: GONG GEN YUAN; Tel: 0576-3661463; M.P.:1390655822), asking that the Respondent transferred the disputed domain to the Complainant. The Respondent said that he might agree to the transfer if the Complainant paid a price of 350,000 yuan (see Appendix V). The disputed domain name was registered in 2001, with a registration and commission fee of only 130 yuan per year. But the transfer price asked for by the Respondent is far higher than the actual registration and commission fees. Moreover, the Respondent said in his reply that he "had no plan of using the domain name". Obviously, the purpose of the Respondent's registration and ownership of the domain name is to sell it to the Complainant so as to seek unjust profits.

On April 12, 2007, the Complainant found in the database of www.net.cn that the contact information of the owner of the disputed domain name, cqtv.com, had been changed to DNS MANAGER.

On April 24, 2007, the Complainant found in the database of www.net.cn that the contact information of the owner of the disputed domain name had once again been changed to Qi Zhong Yan.

In brief, the Complainant has legal civil rights to the disputed domain name and the Respondent has no lawful rights to the domain name; the disputed domain name is confusingly similar to the name, cqtv, of which the Complainant has lawful rights and interests; the registration acts of the Respondent are of subjectively malicious intention. According to relevant stipulations of the CNNIC Domain Name Dispute Resolution Policy and the Rules for CNNIC Domain Name Dispute Resolution Policy, the Complainant hereby requests that the disputed domain name would be transferred to the Complainant.

b. Supplementary grounds for the complaint of the complainant:

(1) The disputed domain name is confusingly similar to the logo of the complainant.

Chongqing Television (CQTV) was founded in 1981, first as a city-level and now as a provincial-level TV station. Since its establishment, CQTV has been used as the most conspicuous and commonly used logo of Chongqing Television. With the development of Chongqing's radio and TV undertakings and the increase in the number of TV channels, a few logos have derived from CQTV, including CQTV-Chongqing (a satellite channel of Chongqing Television) and CQTV-News (a news channel of Chongqing Television), aiming to give a clear definition to the channels and facilitate the viewing of the audience. And, as a basic logo of Chongqing Television, CQTV has always been used to date and recognized by the audience.

In 1979 China Central Television began to use CCTV as its logo, which has enjoyed a high popularity as an extremely important symbol of the TV entity. Thus it has been widely received that the logo of a city or provincial TV station consists of the initials of the city or province plus TV, and this has become a custom.

CQTV in the domain name CQTV.COM registered by the Respondent is identical with the basic logo of Chongqing Television, CQTV. Thus it may confuse and misguide the audience, cause trouble to the mass audience to learn about Chongqing Television via the Internet, and impose negative influences upon the CQTV-brand promotion of the

complainant.

(2) The Respondent has no legitimate interests to the disputed domain name.

The Respondent in this case, Qi Zhong Yan, and the original registrant Gong Gen Yuan are of, by no means, an ordinary relationship between principal and client. Their addresses are the same: 52 Shifeng West Road, Pingqiao, Tiantai, Zhejiang, China 317203. As a matter of fact, Qi is the wife and Gong, her husband (see the reddened parts in Enclosure 4). After the Complainant submitted a letter of complaint (in Chinese) in April 2007, Gong Gen Yuan transferred the domain name CQTV.COM to his wife Qi Zhong Yan, aiming to keep his actual control of the domain name and hinder the complainant from getting back the right to the domain name.

The original registrant Gong Gen Yuan of the domain name CQTV.COM has long been engaged in speculating in domain name businesses (See Enclosure 2). He viciously registered the domain name for purposes of making exorbitant profits, as he did with many other domain names identical to the logos of quite a few famous trademarks (See the reddened and underlined parts in Enclosure 4). The Respondent said that “his purpose of registering the domain name in 2000 is very simple...prevented me from achieving this grand goal. Thus in the past few years, there was quite a long time when this disputed domain name cannot be accessed.” His statement cannot justify his real intention.

(3) The disputed domain name is registered out of ill will and is being used viciously.

Chongqing Television (CQTV) enjoys a fairly high popularity as a TV station of a Chinese municipality directly under the central government. By August 18, 2006, the satellite channel of Chongqing Television had landed on Nanjing and Dalian, marking a coverage of 35 Chinese central cities and Hong Kong and Macao, as well as a coverage of 269 prefecture-level cities and over 2,000 county-level cities. In 2006, Chongqing Television was rated one of the “Top Ten TV Brands of China”. According to the 2006 national viewing rate data issued by CVSC-SOFRES MEDIA in May 2007 as well as the article “Viewing Rate Sum-up of Provincial TV Stations in the First Quarter of 2007” published on Chinese Radio, Film and TV under the administration of the State Administration of Radio, Film and TV, the satellite channel of Chongqing Television, CQTV-Chongqing, ranked high in terms of viewing rate among 35 provincial-level TV stations across China in 2006 and the first quarter of 2007. These data prove that what the Respondent claimed, “... (Chongqing Television) is one of the hundreds of local TV stations of China that have a very low rate of audience viewing”, is completely wrong. (See Enclosure 1)

On March 1, April 11, April 12 and April 24, 2007, the complainant referred to the information about the domain name CQTV.COM at NIC.COM, and found that the information of the registrant of the domain name CQTV.COM had been changed repeatedly, from the original GONG GEN YUAN, to DNS MANAGER and further to Qi Zhong Yan at present. From 2000 to 2004, the Complainant had several contacts with Gong Gen Yuan by phone, and asked issues about the domain name CQTV.COM. Gong Gen Yuan expressed his willingness to transfer the domain name. Considering that the price that Gong Gen Yuan asked for was too high, Chongqing Television refrained from further contacting him. In March 2007, the Complainant contacted Gong Gen Yuan again by phone, and asked about the transfer of the domain name CQTV.COM. Again he expressed his willingness to transfer the domain name, but asked for a transfer fee of RMB 350,000, with no room for negotiation. On April 10, 2007, the Complainant contacted Gong Gen Yuan once again by phone, and he insisted on the same transfer fee. The Respondent said that “(the complainant)...constantly increased its offer for the purchase of the domain name...and said that it might also be okay if the domain name were leased to it...” The readiness of the Respondent to sell the domain name to the Complainant at an exorbitant price and his deliberate distortion of facts are enough to lay bare his vicious intention.

According to data at NIC.COM, Gong Gen Yuan is the registrant of both CQTV.COM and XATV.COM, the other registrant of XATV.COM being Yu Xiao Lin, who is also the registrant of another four domain names GXTV.COM, GYTV.COM, JLTV.COM and NBTV.COM (See Enclosure 3). The above six domain names were all registered between 1999 and 2000, and Gong Gen Yuan is the person that offered registration service for all these domain names. The registration information of all the other five domain names except CQTV.COM was updated at around 08:00 on June 1, 2007. From this we can see that Gong Gen Yuan and Yu Xiao Lin are very intimate to each other. It's very likely that GXTV.COM, GYTV.COM, JLTV.COM and NBTV.COM were all registered by Gong Gen Yuan in the first place. Later, since the ownership of the domain name CQTV.COM was disputed, Gong Gen Yuan transferred the four domain names to Yu Xiao Lin, hoping to keep his control of the domain name CQTV.COM and prevent the Complainant from getting back the right to the domain name. If possible, the complainant would like to request that ADNDRC investigated into the relevant historical data at NIC.COM.

The respondent claimed that “From May 2006, it started to cooperate with another company to build the domain name CQTV.COM into a ‘local search engine website’ so that visitors can get to know relevant information of their separate cities. The service is now provided free and is not commercial.” Nowadays many Internet enterprises offer a service named domain parking in which the owner of a domain name needs only to park his idle domain name at a server designated by the parking service provider, and the domain parking system will automatically generate ad pages according to the domain name parked. Advertisers will pay according to visits and the owner of the domain name can receive incomes from the payment (See Enclosure 6). If you type in XATV.COM, GXTV.COM, GYTV.COM, JLTV.COM or NBTV.COM in the IE Explorer, you will find that the web page that consequently appears is very much similar to that of a “local search engine website” as the Respondent claimed, and also similar to that of the domain parking demonstration website www.chinafashion.com offered by the fairly famous domain parking service provider www.silverclicks.com.cn (See Enclosure 5) All these show that the Respondent has parked the domain name CQTV.COM and gain benefits from the parking. The so-called “local search engine website” claimed by the Respondent is no more than an ad link automatically generated by the domain parking system of a domain parking service provider.

In the meantime, the profits that the owner of the domain name gains from domain parking are in proportion to the

number of visits to the parked domain name. As a TV entity of a Chinese municipality directly under the central government, Chongqing Television enjoys widespread influence. By contrast, the real intention of the respondent is to receive greater visits and gain great profits by making use of the confusing similarity between his registered domain name CQTV.COM and the logo of Chongqing Television, CQTV.

From the above, we can reveal that the real purpose of the respondent's registering the domain name CQTV.COM is to make exorbitant profits from domain name transfer while earning profits from domain parking and other means before the domain name is successfully transferred.

Additional Enclosure Explanation

Enclosure 1: About Chongqing Television

Enclosure 2: Gong Gen Yuan's Crazy, Vicious Registration of Domain Names for Exorbitant Profits

Enclosure 3: .com Domain Names Containing "TV" Related to Gong Gen Yuan

Enclosure 4: Domain Name Dispute Arbitration Awards Related to Gong Gen Yuan and Qi Zhong Yan

Enclosure 5: Web Pages of CQTV.COM, XATV.COM, GXTV.COM, GYTV.COM, JLTV.COM and NBTV.COM in Comparison to That of CHINAFASHION.COM

Enclosure 6: About Domain Parking

Respondent

a. The Response is based on the following grounds:

The Respondent considers that the disputed domain name is neither identical, nor is it confusingly similar to the trademark or service mark in which the Complainant has rights.

As evidenced by the upper image of Appendix I of the Complaint, the Complainant has only proved that it uses the term "CQTV" together with other Chinese characters as their logo, but has not provided any evidence to prove that it owns the trademark or exclusive right to the term "CQTV". On the contrary, sufficient evidences from the Respondent prove that Complainant does not have trademark rights to the disputed term "CQTV". Evidences show that, although the Complainant had ever filed different trademark registration applications for 3 different images on November 12, 2004, the applications are still pending and they still have not been verified and still not approved. Therefore, they have not yet had any registered trademark on the term "CQTV" or the like.

In addition, although the Complainant states positively that they registered the domain name ccqtv.com and cqtv.com.cn as early as in 1998, the Respondent believes that it is totally irrelevant to whether the Complainant has the trademark right to the term "CQTV".

The domain name was registered on 21st Jan., 2000 by way of authorizing Mr. Gong Genyuan. The motive the Respondent had when registering the domain name in 2000 is simple enough. It was simply because there were many very famous and popular TV game shows called "Quiz TV Show (Quiz Show)" in the world. The Respondent put a very high value on this kind of TV program and had hoped to promote it on the Internet and hopefully, to develop a Chinese Quiz TV. He therefore chose the abbreviation of Chinese Quiz TV and registered the disputed domain name "cqtv.com". Unexpectedly, due to difficulties of raising funds, eventually he had been unable to raise enough funds to support such a big program like this, the hope was not actualized all the way and so over the first few years the domain name in dispute had been inaccessible. At the beginning of 2003, the Respondent developed a website "Legendary TV network (ChuanQi TV play)" under the domain name "cqtv.com". Later on, the Respondent realized that live update and maintenance for TV related program was so difficult, so the Respondent had no choice but to stop the service in the beginning of 2006 (the website is now filed at <http://www.kaiwei.com/cqtv/>). In or about May, 2006, the Respondent started to work with another company and developed the domain name into a website for "Local Search Engine", serving visitors directly with information on their living places. This service is a free and non-commercial service at present.

The purpose that the Respondent registered this domain name was not for sale but for use in developing website. During the period of 7 years from January 2000, and ever since the domain name has been registered, the Respondent and Mr. Gong have never contacted the Complainant, as well as any competitors of the Complainant.

The faxed document of the Complainant's evidence (Complaint's Attachment V) is meant to prove that Mr. Gong, the manager of the disputed domain, had ever made an offer to the Complainant. But the fax was not sent by Mr. Gong. Obviously and certainly the so-called offer is not Mr. Gong's declaration of his will. It is obviously clear that, in the presence, there are big differences between the handwriting on the fax submitted by the Complainant and Mr. Gong's handwriting on the Declaration hereto. From that, it is obvious that the fax is not written by Mr. Gong.

Now the truth is that the Respondent has been legally using the domain name to serve customers for a free service. And there is not any relation such as cooperation, joint venture or alliance existing between the Complainant and the Respondent. The service provided by the Respondent is also absolutely different from what Complainant provides. Therefore, the so-called inducement of the Complainant's users and confusion about the Complainant's service are out of the question.

b. Supplementary grounds for the response of the Respondent:

(1) Complainant's contention that "Thus it has been widely received that the logo of a city or provincial TV station consists of the initials of the city or province plus TV, and this has become a custom." is a concept of brand which is a colloquial term instead of a legal term. It does not necessarily lead to the conclusion that the Complainant has civil rights, such as trademark rights or other exclusive rights in the term "CQTV".

According to the Trademark Laws of China where both parties reside, mark or trademark is protected under the Law only when it has been registered. Complainant's attempt to take "CCTV" as an example and by taking it for granted, to

argue that they have rights in the term “CQTV” in the Internet field does not have factual basis and legal basis. It is our contention that Chongqing Television Station is, regardless of the scale, signal coverage, and influence, totally not comparable with “CCTV”. Complainant’s contention that “Thus it has been widely received that the logo of a city or provincial TV station consists of the initials of the city or province plus TV, and this has become a custom.” is nothing but a matter of opinion. Actually the fact is unlike what Complainant said- The Shanghai TV is using “STV”, Beijing TV Station is using “BTV”. Qingdao TV Station is using the “QTV”, Zhejiang Television is using “ZTV”, Guizhou TV Station is using GZSTV, And Hebei is using “HEBTV”, Shanxi TV is using “SXTVS”, and so on.

(2) According to the following news reports dated on or about 07/09/2001 on the official website of Anhui Provincial Administration of Radio, Film and TV, and other online news medias, from July 1 onwards, the former Chongqing television, Cable Television, Education Broadcast Television were formally merged. The seven television channels were to use the new unified Chongqing Television Station logo and call sign. After the merger, the seven new channels would appear with brand new images forming seven professional channels matching multi-level, multi-function, and serialization of a new pattern.

Chongqing Television Station, a/k/a Chongqing Satellite Television Station changed its logo to CQTV. Call sign was changed to “China Chongqing Television Satellite Programs”

The No.1 set of program of Chongqing Television Channel 8 was changed to CQTV-1. Call sign was changed to “Chongqing TV channels integrated”.

It is obvious and clear that Complainant had not changed their logo to contain term “CQTV” until July 1st, 2001 which is 1 year and 7 month after the Respondent registered the disputed domain. Later on May 27, 2005, Complainant changed its logo again to combine “CQTV” with other Chinese characters. In the Complaint, the Complainant has not provided any convincing evidence to prove that they have trademark rights or other exclusive rights in the dominant part, which is the term “CQTV” of disputed domain name “CQTV.com”, nor has the Complainant done so in their subsequent Additional Grounds. The term “CQTV” is neither identical nor similar to Complainant’s full name “Chongqing Television Station”, nor the abbreviation “CTS” of the said trade name. The Respondent’s registration of disputed domain is entirely legal and lawful in accordance with first come, first serve and the principles of equity.

(3) The authorization by the Respondent for Mr. Gong to act as an Agent is effective and entirely lawful. Also, the Respondent has never denied that it has husband-and-wife relationship with Mr. Gong. If the Respondent intended to conceal, he would not modify the Whois contact information but left the address field as it was before. The reason for Mr. Gong to change the contact info was, as stated in the previous Response, to avoid future harassments so that he decided to let the original owner to decide whether this domain name should be for sale. This action could also keep his family relations from being affected. The Complainant purposely confuses the concept of time in the Complaint. In fact, the ownership modification was completed on or about April 11, 2007. But the date on which the Respondent received the first Chinese Complaint forwarded by the Center was about April 29, 2007. It was unlike what Complainant said “After the complaint submitted a letter of complaint (in Chinese) in April 2007, Gong Gen Yuan transferred the domain name CQTV.COM to his wife Qi Zhong Yan...” The ownership modification is, therefore, not in breach of any rules and is lawful and acceptable. Moreover, a simple modification of ownership does not, itself, “keep actual control of the domain name and hinder the complaint from get back the right to the domain name.” Hence, their contention that “Gong Gen Yuan transferred the domain name CQTV.COM to his wife Qi Zhong Yan, aiming to keep his actual control of the domain name and hinder the complaint from get back the right to the domain name.” is simply a presumption which is not based on the fact.

(4) In Complainant’s Enclosure 2 & 4 of its Additional Grounds, it mentioned a previous case in which Mr. Gong was a Respondent. The Respondent in that case did have submitted an electronic response but eventually it was ignored by the Center and the Panel due to “unintelligible characters”, and finally the Respondent was considered defaulted. As the Respondent had not responded to the allegations in that Complaint, that Panel can only make decision on the basis of that Complaint. Therefore, it does not necessarily mean that so-called facts in that decision are true and nothing but true. Our allegation is that, even if the facts in that case are true, it does not necessarily lead to the same result and no presumption should be drawn as an inference against the Respondent because courses of conduct of each case are different. (In Vernons Pools Limited v. Vertical Axis, Inc, WIPO Case No. D2003-0041, Panelists find that “each case must be considered in its merits and one previous case does not comprise a ‘course of conduct’. The Panel declines to draw any inference against the Respondent from the NAF decision in which it had been a Respondent”)

The Respondent was very clear that the previous case is before the public. If the respondent had any bad faith in the registration of disputed domain “CQTV.com”, He would not be as ignorant as to change the ownership to his wife again to link with the previous case and further leave the Panel and Complainant more room for imagination.

(5) As stated in our previous Response that Mr. Gong was well experienced in registering domain names. In addition to that, He is also an authorized agent of registrar Onlinenic Inc. which is the registrar in this case. Apart from his own investment, he also provides domain name registration services to others. So, his action as an agent to register domains for his relatives, friends and those on the Internet is beyond reproach. Thus, it is not surprising that he is listed as a Registration Service Provider on some domain name records. Mr. Gong mainly focused on domains that don’t have trademark issues or disputes and comply with the UDRP. For example, the geographical domains, number domains, 3 letter, 4 letter domains, English one word domains, Generic HanYuPinYin domains, etc. In the Addition Grounds, the complainant alleged that “The original registrant Gong Gen Yuan of the domain name CQTV.COM has long been engaged in speculating in domain name businesses” is, again, a false allegation.

The Respondent has no idea why there are so many domains listed on Enclosure 2, the website printed out of Complainant's Additional Grounds (<http://test.sinadns.net:81/domain/en.htm>). The Respondent found that some domains listed there do belong to Mr. Gong but there are much more that do not belong to Mr. Gong. The Respondent is unable to respond and to make comments on domains that do not belong to the Respondent. The Respondent therefore can only judge accordingly that the mentioned "for sale" page might be developed by a 3rd party domain name broker for reselling domain. There has always been a very special business in the domain name field - the Domain Name Brokerage. The brokers will develop web sites or pages and list selected valuable domains for sale. Once a buyer approaches them and makes an offer or further purchase a domain name from the broker, the broker will move to the real domain name owner to buy the domain and then resell it to the buyer. The careful Panel must be able to notice that domain names listed on the said page and those that belong to Mr. Gong are mostly geographical and generic domains that do not have trade mark issues. Obviously Mr. Gong chose to focus primarily on non-infringing domain names. Previous cases and decisions also find that selling domain names is legitimate and is allowed as long as it complies with the Policy. (Sudnif S.A. v. Tulle, WIPO Case No. D2000-0807, finding "bad faith only occurs if the domain name infringes rights belonging to someone else, and if the registration is made with the intention of somehow disrupting or damaging the business of the holder of the said right.") The motive the Respondent had when registering the disputed domain is, as stated in our last Response, simple enough. Even though the plan has not been able to achieve due to objective reasons, the plan fully demonstrates efforts Respondent had made on the plan. The Respondent therefore is not going to allege further.

(6) The Additional Grounds mentioned a rating data provided by CVSC-SOFRES MEDIA ("CSM") wishing to demonstrate that they are well-known and influential. The Respondent accepts that they may have higher rating in their own city and also probably rank high among other satellite television stations. Nonetheless, we discover from the May 2007 issue of the same "China Radio Film & TV" magazine that Complainant are not even ranked Top 10 in almost all participating cities except for Chongqing City where Complainant resides. They do not even rank Top 10 in its nearest city Chengdu City, located in Sichuan Province where Complainant also resides. This proves that Complainant is merely a local and regional television station which has low audience rating.

(7) Complainant's allegation that it had contacted Mr. Gong GenYuan for several times during 2001~2004 inquiring about the disputed domain name CQTV.com is totally an accusation without evidence. Except for phone calls made on March 7 April 10 and April 12th that are possibly from the Complainant, the Respondent or manager of the disputed domain name has never been in contact with Chongqing Television Station, or any person who claims to be a representative of Chongqing Television Station. The Respondent does not wish to further respond to such meaningless allegation which is not based on facts.

However, it is our contention that, even if what Complainant said regarding the domain name sale discussion is true, such behavior cannot, taking for granted, be regarded as a bad faith. A mere domain name sale or discussion does not amount to bad faith. (Open Systems Computing AS v. Alberto degli Alessandri, WIPO Case No. D2000-1393, finding that "Respondent was not acting in bad faith by discussing a sale when Complainant initiated an offer to purchase it from Respondent" and Mark Warner 2001 v. Larson, FA 95746, finding that "considering or offering to sell a domain name is insufficient to amount to bad faith under the Policy; the domain name must be registered primarily for the purpose of selling it to the owner of trademark for an amount in excess of out-of-pocket expenses.")

(8) The Complainant's judgment from the last update time for domain names XATV.COM, GXTV.COM, GYTV.COM, JLTV.COM, NBTV.COM believing that the said domains belong to Mr. Gong is basically because Complainant does not have much knowledge about the Whois system. "As a matter of fact, any single modification to the record/settings with the registry will be deemed as an update. This includes modifications of registrant record, record for administrative contact, billing contact, DNS settings, etc. That is to say, the Whois system will treat it as an update even if DNS settings for a domain name have been changed. Actually, as the record shows, the said domains do not belong to Mr. Gong.

In the domain name investment field, 3-letter domains such as "abc.com", 4-letter domains like "abcd.com", and 4-number domains such as "6789.com" are always appraised with high values because possible combinations are few and limited. Therefore, such domains have always been targets that almost all domain name investors are chasing after. By visiting <http://www.onewhois.com> and inputting any 4-letter/number domain names (like wxyz.com or 8543.com) for a query, one can easily find that all these domain name combinations have long been registered and unavailable. Especially for those "2-letters+TV.com" domain names starting from "aatv.com" to "zztv.com", they have been unavailable for long and impossible for people to register such domain names because there are only $26 \times 26 = 676$ possible combinations. As stated, Mr. Gong is well experienced in registering and in domain name investment, his domain name registrations in compliance with UDRP and general domain investment model are also deemed acceptable in previous cases. Accordingly, our contention is that, even if all above-mentioned domains belong to Mr. Gong, it does not amount to bad faith in the registration of disputed domain name "CQTV.com".

(9) The Respondent is also very surprised by Complainant's pointing out "Domain Parking" because it is 365.com in Hangzhou (evidence provided in our last Response) that contacted the Respondent to discuss the cooperation, not the silverclick.com mentioned by the Complainant. As for the question about why that being so, the Respondent immediately asked the said 365.com and then got an email reply in which 365.com said: "At present, silverclick.com provides their members with some of 365.com's services. So you may see similar pages from other websites that looks like your cqtv.com..." However, Respondent contends that, given that both companies provide the same service and even if the Respondent profits from such services, it does not deprive Respondent from his interest and legitimate rights in the disputed domain name. (In Williams, Babbitt & Weisman, Inc. v. Ultimate Search NAF. FA98813, Panelists find that

“respondent added the domain name to its already large list of domain names that Respondent contends are used in an advertising venture. See Paragraph 4(c)(i) of the Uniform Domain Name Dispute Resolution Policy. Complainant counters this by arguing that the practice of registering defunct names to attract advertising hits is deceptive or inimical to the interests of Internet users. Neither the current UDRP nor current ICAAN registrar contracts preclude this type of domain name use.”)

(10) Pursuant to Rules 4(a) of the Policy, the complainant must prove that each of these three elements is present-

(i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) The Respondent have no rights or legitimate interests in respect of the domain name; and

(iii) The disputed domain name has been registered and is being used in bad faith.

Similar rules are also adopted by the “CNNIC Domain Name Dispute Resolution Policy” .

It is our contention that, obviously and for the lack of convincing and sufficient evidence, the domain name in dispute is totally not identical, nor is it similar to the trademark or service mark in which Complainant has rights; that the Respondent does have legal rights and interest in the domain name; and that the domain name in dispute was not at all registered in bad faith and it is being used in good faith.

(11) Conclusion

Pursuant to the “Uniform Domain Name Dispute Resolution Policy” , “Rules for Uniform Domain Name Dispute Resolution Policy” , “CNNIC Domain Name Dispute Resolution Policy” and other rules and laws applicable, the Respondent respectfully requests the Panel to dismiss the Complaint.

Annex Index

Website screenshot of an online media retrieved from <http://www.dacen.net/news/2007/04061619/1/70318987678.shtml> announcing the logo change of Chongqing Television Station.

Website screenshot of an online media retrieved from http://bbs.mediachina.net/index_bbs_show.php?b_id=1&s_id=1768 announcing the logo change of Chongqing Television Station.

Website screenshot of an online media retrieved from <http://www.ahgd.gov.cn/hyxx/0179034504.htm> announcing the logo change of Chongqing Television Station.

Previous case decision - 深圳市腾讯计算机系统有限公司 v. 杨飞雪 CND0300003

Previous case decision - Google INC. v. 北京国网信息有限责任公司 (2003) 贸仲域裁字第0006號

Previous case decision - Vernons Pools Limited v. Vertical Axis, Inc, WIPO Case No. D2003-0041

Previous case decision - Sudnif S.A. v. Tulle, WIPO Case No. D2000-0807

The Site Plan for Chinese Quiz TV Show retrieved from Respondent’ s backup disk.

9. Cover picture of “China Radio Film & TV” magazine” , and its content regarding Top 10 TVs rating in 30 major cities in China by CVSC-SOFRES MEDIA (“CSM”) . Similar results can be found at <http://www.csm.com.cn/download/top10.html>

10. Previous case decision - Open Systems Computing AS v. Alberto degli Alessandri, WIPO Case No. D2000-1393

Previous case decision - Mark Warner 2001 v. Larson, FA 95746

Previous case decision - Williams, Babbitt & Weisman, Inc. v. Ultimate Search NAF. FA98813

Screenshot of the email reply from 365.com

Phone record from Mr. Gong’ s mobile service provider indicating time and period of the calls possibly made by the Complainant.

Findings

Identical / Confusingly Similar

The prerequisites in the Policy, Paragraph 4(a)(i), is must be proven by the Complainant first. So the Complainant should specify the trademark or service mark on which the Complaint is based and, for the mark, describe the goods or services, if any, in connection with which the mark is used. If applicable, attach copies of all registration certificates.

Although the Complainant has proved that they use the term “CQTV” together with other Chinese characters as their logo, but they has not provided any trademark registration certificate or any convincing evidence to prove that they own the trademark right to the term “CQTV” .

As the Complainant has not proven that they own the trademark right to the term “CQTV” , the Panel considers the first criterion has not been proved.

Rights and Legitimate Interests

As the prerequisites in the Policy, Paragraph 4(a)(i) has not been fulfilled, it is unnecessary to consider if the second criterion has been proved.

Bad Faith

As the prerequisites in the Policy, Paragraph 4(a)(i) has not been fulfilled, it is unnecessary to consider if the third criterion has been proved.

Status

www.cqtv.com

Complaint Rejected

Decision

The Panel decides that the registration of the domain name <cqtv.com> should not be transferred to the Complainant. The Complaint is dismissed.

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