



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

English Print

Decision ID	DE-0800147
Case ID	CN-0700169
Disputed Domain Name	www.bank-of-china.net
Case Administrator	Xinmin Cui
Submitted By	Guangliang Tang
Participated Panelist	
Date of Decision	21-01-2008

The Parties Information

Claimant	BANK OF CHINA LIMITED
Respondent	ROY TANG

Procedural History

The Complaint was filed with the Asian Domain Name Dispute Resolution Center (the “Center”) on September 30, 2007. On October 17, 2007, the Center transmitted a request to Tucows Inc. (the Registrar of the domain name) for registrar verification in connection with the domain name at issue. On October 29, 2007, Tucows Inc. transmitted its verification response to the Center, confirming that, the domain name at issue was registered under Tucows Inc. domain registrar, and the Respondent is listed as the registrant. The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the Center’s Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”). In accordance with the Rules, paragraphs 2(a) and 4(a), the Center transmitted the Complaint to the Respondent on November 8, 2007. On November 15, 2007, the Center sent the Notifications of Commencement of proceedings to the Parties, ICANN and the Registrar. On December 24, 2007, within the fixed period of Response, the Respondent submitted a Response via e-mail to the Center. On the same date, the Center noticed the Parties to select Panelist by ranking based on a five-person list. On December 24 and 26, the Complainant and the Respondent submitted their ranking list to the Center respectively. Then the Center appointed Tang Guangliang as the sole Panelist on the basis of the Parties’ selection after receiving a Statement of Acceptance and Declaration of Impartiality and Independence from Tang Guangliang on January 2, 2008. On January 4, 2008, the Center transferred all the case materials to the panel, and asked the panel to submit a decision before January 18, 2008.

Factual Background

For Claimant

According to the statements in the Complaint, the Complainant, BANK OF CHINA or BANK OF CHINA LIMITED in full, established in 1912 pursuant to the approval of Mr. Sun Yatsen, is one of the four largest commercial banks controlled by Chinese government and the most internationalized commercial bank in China with over 600 overseas operations, whose business ranges over commercial banking, investment banking and insurance. Members of the group include BOC Hong Kong, BOC International, BOCG Insurance and other financial institutions. The Complainant provides a comprehensive range of high-quality financial services to individual and corporate customers as well as financial institutions worldwide. In tier one capital, it ranked 18th among the world’s top 1000 banks by The Banker magazine in 2005. In 2003, it was named by the State Council as one of the pilot banks for the joint-stock reform of the wholly state-owned commercial banks. On August 26, 2004, it was formally incorporated as a joint stock commercial bank. In this case, the Complainant empowered Zhou, Sheng (周盛) as a representative.

For Respondent

According to the information in the Complaint, the Respondent is a natural person by the name of ROY TANG, lived in the US. Although there was a response received, no further information about the Respondent known to the Panel.

Parties' Contentions

Claimant

The assertions of the Claimant includes—(1) The Complainant's Prior rights. i. The prior registered trademark. The Complainant is the registrant of the trademark "BANK OF CHINA" with Reg. No. 911703, which was registered on December 7, 1996, much earlier than the date of Jan. 22, 2003 when the disputed domain name was created. ii. The prior corporation name. The Complainant was reformed in 1983 and the corporation name is still "中国银行" in Chinese, "BANK OF CHINA" in English correspondingly. After incorporated as a state-controlled joint stock commercial bank in August 2004, the Complainant's name is "中国银行股份有限公司" in Chinese, "BANK OF CHINA LIMITED" in English correspondingly, and "中国银行" (BANK OF CHINA) for short usage. (2) The disputed domain name is confusingly similar to the trademark and the corporation names in which the Complainant has rights. The trademark and corporation names have been used for many years and won a great reputation for the services provided by the Complainant and the history thereof. The public will naturally associate "BANK OF CHINA" with the Complainant and its trademark. The main part of disputed domain name is "bank-of-china", while the trademark is "BANK OF CHINA". It is obvious that the domain name is confusingly similar to the trademark in which the Complainant has exclusive rights. Furthermore, as we know, "BANK OF CHINA" could not be directly registered as a domain name because there are blank spaces between words. According to relevant rules, English letters (a-z), digit (0-9), and "-" usually are valid and blank could not be adopted. So using "-" to connect words is a common way. Moreover, the disputed domain name is confusingly similar to the Complainant's corporation names, "BANK OF CHINA LIMITED" and "BANK OF CHINA" which was ever used and now is used as a shortened form. (3) The Respondent has no rights or legitimate interests in respect of the domain name. (4) The domain name is being used in bad faith. The Respondent knew or should have known the Complainant and its trademark because of their great reputation. The domain name has prevented the Complainant from reflecting the mark and Complainant's name in a corresponding domain name and the Respondent has not used it practically for more than four years. By creating the domain name, the Respondent shall have attracted internet users to his website or other on-line location, by creating a likelihood of confusion with the Complainant's mark and name as to the source, sponsorship, affiliation, or endorsement of Respondent's website of location. It also shall be dangerous for the clients of banks.

Respondent

The assertion of the Respondent includes—The registrant of the domain name (and also the Respondent of the case) is an individual in the State of Delaware. There is NO institution named or bearing similar name as the Complainant's in the State of Delaware. The registrant did NOT have any knowledge of the existence of the Complainant in the world. Also, the registrant has NO idea that there is an institution in the world bearing the name of the Complainant until he received this Complaint. The Complainant may have certain impact in China. However, it is improper and illegal for the Complainant to use its impact that may exist in China against an individual, who is far far away from China and has no idea (and also does not have any obligation or responsibility to know as a common and reasonable person in the State of Delaware) the existence of the Complainant and its name. The registrant has registered the domain name since June 22nd 2003. When the domain name was registered, neither in the State of Delaware nor in the United States of America was there a registered trademark which was similar to the name of the Complainant. During the past about 5 years, the registrant did NOT receive any complaint about the domain name from the Complainant or anybody else. The Complainant knows the domain name, and also had the opportunity to but did NOT take any legal action about the domain name during the past almost 5 years. Neither in China nor in the United States of America did the Complainant take any legal action about the domain name, while it has full knowledge of the domain name. It reflects that the Complainant had given up or even did not have at all any legal rights on the domain name. The Complainant is a commercial institution. According to the ICANN domain name registration rules and common knowledge that ordinary people have, the ".com" (BUT NOT ".net") domain name is the right domain name for a commercial institution. The Respondent has just realized that the Complainant may use the domain name "Bank-of-China.com", after he received the Complaint. As known, a registered trademark only has legal effect in the jurisdictions where it is registered. The Complainant can NOT use its Chinese trademark against the registrant in the jurisdiction of the United States of America or in the jurisdiction of the State of Delaware. Also, any new right and privilege that the Complainant might obtain anywhere on or after June 22nd 2003 can NOT be used to against the registrant/Respondent. The Complainant does NOT have any existence in the State of Delaware either, where the registrant/Respondent is located. Although the Respondent has not taken any legal action against the Complainant to protect the Respondent's legal right and privilege to use the domain name in the jurisdiction of the United States of America and in the jurisdiction of the State of Delaware before the Respondent received the Complaint from the Complainant (at that time the Respondent started knowing the existence of the Complainant in the world and its name), the Respondent reserve all such right and privilege to do so in the future

as necessary. The English word "bank" has not only the meaning in Chinese of "银行" but also a lot of others such as "海岸" and "边" etc. The word "china" also bears the meaning in Chinese of "瓷器" etc. other than a country name. When the registrant uses the domain name, it never identified itself or marked itself to any meaning of a financial institution. The domain name was intended to be used under the meaning of "瓷器海岸", for marketing and trading of "china"-瓷器". The Respondent's right and privilege is protected by the laws of the State of Delaware, the laws of the United States of America, and also by International laws. After the Respondent received the Complaint from the Complainant, the Respondent suddenly found that even in the jurisdiction of the People's Republic of China there are a lot of institutions having similar names as the Complainant's and even doing the same kind of business (finance) as Complainant's, such as the "Agricultural Bank of China" and the "Industrial and Commercial Bank of China" etc. The Complainant can NOT have exclusive right to use any of the following words: "bank", "of", "china" or "bank of china". Neither in China, nor in the United States of America. As the Complainant has identified and clearly marked itself, it may have unusual impact and effect in China and on Chinese people. In the consideration of the fact that the dispute settlement center for this domain name dispute is located in China and the possible arbitrator may also be a Chinese, the Respondent hereby officially ask that this case shall be transferred to a dispute settlement center that is out of the People's Republic of China and be decided by a non-Chinese. The Respondent hereby request the case to be transferred to a dispute settlement center in Europe. As widely known, the CIETAC has long-time & extremely-close commercial relationship with the Complainant, has special relationship with the Chinese government, and is a quasi-government institution in China. Because the Complainant is a government-character institution and government finger in China, and may have unusual impact in China and on other institutions & individuals located in China, the Respondent does NOT accept the jurisdiction of the CIETAC for the domain name dispute. This response does NOT constitute the acceptance of the jurisdiction of CIETAC.

Findings

Pre-Decision on Procedural Issue

About the Jurisdiction

The Respondent, in his response to the Center, contradicted the jurisdiction based on personal suspicion about the independency and impartiality of the Center and the Panel. For such a reason, the Respondent claimed to transfer the case to an European institution. In fact, the domain name dispute settlement procedure is mandatory administrative procedure based on the domain name registration agreement signed between the Respondent and the domain name registrar, in which the Respondent agreed to accept the jurisdiction of any one of the administrative-dispute-resolution service providers listed at <http://www.icann.org/dndr/udrp/approved-providers.htm>, according to a Complainant's claim. In this case, as the Complainant had decided to present his Complaint to the Center, the Respondent has no choice but accepts the jurisdiction of the Center.

Identical / Confusingly Similar

Firstly, as the Complainant had proved that "BANK OF CHINA" was registered as a trademark in 1996, the Panel finds that the Complainant has established ownership of the trademark "BANK OF CHINA", as well as trade name incorporating the same words. On the Internet, trademark registration in any country may satisfy the requirements of right as the basis of domain name dispute. Considering that the United States Trademark Law does not require a mark be registered as the pre-condition of legal protection, and there's no independent trademark registration system in the State of Delaware, the Panel concludes that, even in the U.S., the validity of this trademark are beyond dispute. While the identification part of the disputed domain name is "bank-of-china", which has no difference with the Complainant's trademark and trade name except its letter's lowercase and "-" between words, the Panel agrees with the Complainant that, the main part of the disputed domain name "bank-of-china.net" registered by the Respondent is confusingly similar with the Complainant's trademark "BANK OF CHINA" in pronunciation and meaning, thus they are likely to cause confusion among consumers.

Rights and Legitimate Interests

The Respondent asserted that the English word "bank" has not only the meaning in Chinese of "银行" but also a lot of others such as "海岸" and "边" etc. The word "china" also bears the meaning in Chinese of "瓷器" etc. other than a country name. When the registrant uses the domain name, it never identified itself or marked itself to any meaning of a financial institution. The domain name was intended to be used under the meaning of "瓷器海岸", for marketing and trading of "china"-瓷器". The Respondent's right and privilege is protected by the laws of the State of Delaware, the laws of the United States of America, and also by International laws. The Panel agrees with the Respondent that both "bank" and "china" have not only one meaning as used in daily life, but the Panel has not been convinced by the Respondent that the domain name was intended to be used under the meaning of "瓷器海岸", because the Respondent

had not presented any one prior case to prove the existence of such an usage. The Panel thus concludes that, as there is no evidence for the Respondent to have any right or legitimate interest whatsoever in respect of the trademark “BANK OF CHINA”, or there was any association between the trademark “BANK OF CHINA” and his activities before registering the domain name, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Bad Faith

According to its assertion, the Complainant had become an internationalized banking group which has more than 600 overseas operation, and ever ranked 18th among the world’s top 1000 banks by The Banker magazine in 2005, it is presumable that the Respondent knew about its existence when registering the disputed domain name. Although the Respondent said that he had no knowledge and no obligation to know the existence of the Complainant and its trademark, the Panel found that the Respondent is not a person who knows nothing about China, because he knows the multiple meanings of the English words, and even knows the status of CIETAC in relation with the government. For this reason, the Panel cannot trust the Respondent when he said he didn’t know the Complainant at the time of the domain name registration. The Panel accepts the Complainant’s assertion that, by using the domain name, the Respondent attempted to attract, for commercial gain, Internet users to his web site 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 web site or location or of a product or service on your web site or location. As the final finding, the Panel concludes that the domain name has been registered and used in bad faith.

Status

www.bank-of-china.net Domain Name Transfer

Decision

ursuant to Paragraph 4(a) of the Policy and Article 15 of the Rules, this Panel orders that the domain name “bank-of-china.net” be transferred to the Complainant.

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