



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

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Decision ID	DE-0800154
Case ID	CN-0700176
Disputed Domain Name	www.中行.com
Case Administrator	xiechangqing
Submitted By	Hong Xue
Participated Panelist	

Date of Decision	27-02-2008
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The Parties Information

Claimant	BANK OF CHINA LIMITED
Respondent	Zhong Hang L.

Procedural History

On 17 October 2007, the Complainant submitted its Complaint to the Beijing 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 23 October 2007, the Centre forwarded a copy of the Complaint to the Registrar of the domain name in dispute, Spot Domain LLC d/b/a Domainsite.com for his confirmation on relevant registration information.

On 14 November 2007, the Centre received the Registrar’s confirmation of registration information of the domain name in dispute.

On 22 November 2007, the Centre sent the Transmittal of Complaint to the Respondent.

On 12 December 2007, 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 27 December 2007, the Center received the Respondent’s application for extension of the period of submission of the Response. On the same day, the Center decided that the Respondent submit the Response by 13 January 2008.

On 13 January 2008, the Centre confirmed the receipt of the Response. On 20 January 2008, the Centre sent the Transmittal of Response to the Complainant.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Ms. Xue Hong, on 29 January 2008, the Centre informed the Complainant and the Respondent of the appointment of the Panelist, and transferred the case file to the Panelist.

On 5 February 2008, the Centre notified the Parties of the order of the Panel that they should submit the supplemental materials on 13-17 February 2008. The deadline for the Panel to render the decision was extended to 26 February 2008.

On 18 February 2008, the Centre transferred to the Panel two supplement submissions from the Complainant and Respondent respectively.

On 20 February 2008, the Centre transferred another two supplements from the Parties to the Panel.

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

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, Bank of China Limited, was established in 1912 and reformed in 1983. The Complainant's name in Chinese is 中國銀行 and registered the trademark “中行” in China as early as 1996.

For Respondent

According to the record in the Whois database, the Respondent's domain name “中行.com” was registered on 4 January 2007.

Parties' Contentions

Claimant

Since both Parties' submissions contain the irrelevant and inappropriate information and the Respondent claims that some evidence submitted is private and confidential, the Panel decides to summarize their primary arguments as below, instead of showing their full-text submissions.

The Complainant

The Complainant, Bank of China Limited, is a commercial bank in China with over 600 overseas operations. The Complainant had the trademark “中行” registered on December 7, 1996. The Complainant's name in Chinese is “中國銀行” and is usually called as “中行”.

The registered domain name is confusingly similar to the trademark and corporation name in which the complainant has right. The Respondent has no right or legitimate interests in respect of the domain name. The disputed domain name is being used in bad faith.

The Complainant and the trademark are well-known in the world. The Complainant won many awards. The word “中行” has been publicly associated with the Complainant and the trademark. The Respondent knew or should have known the reputation of the Complainant and the trademark. The Respondent's domain name prevents the Complainant from reflecting the trademark and corporation name in the domain name. The Complainant doubts whether “中行” is the Respondent's real name in China.

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

Respondent

The Respondent did not know “中行” was associated with the Bank of China Limited. The word “中行” is a common word and a common personal name, rather than a distinctive identifier solely associated with the Complainant. The Complainant's trademark “中行” is not well-known in Taiwan, where the Respondent resides in. The reputation that the Complainant claims is unproven to the Respondent.

The Respondent's personal name is “中行” (Zhang Hong). A copy of the Respondent's ID card in Chinese is submitted. A district in the city of Taipei is called Avenue 中行. The Respondent purchased the disputed domain name for the establishment of a personal blog concerning Avenue 中行.

Because there are a number of domain names containing “中行” registered by the third parties, the Respondent's domain name in dispute is neither identical with nor confusingly similar to the Complainant's trademark.

The Respondent has the right and legitimate interests in the domain name and does not have any bad faith in registration or use of the domain name.

The Respondent requests the Complaint be rejected.

Findings

Contempt of the Proceeding

On 5 February 2008, the Respondent's agent, in violation of the Rules, Paragraph 8, directly sent an email to the Panel while copying to the Centre. On 8 February 2008, the Centre notified the Parties of the Panel's order that no Party or anyone acting on its behalf have any unilateral communication with the Panel. Irrespective of the Panel's order, the Respondent's agent, on 20 February 2008, directly made an unsolicited submission to the Panel through two consecutive emails. The Panel finds that the Respondent's excuse that the Centre's email system was malfunctioning is untrue because the Centre transferred the Respondent's captioned submission to the Panel exactly on the same day. In accordance with the Policy, a domain name registrant shall fully comply with the terms and conditions set forth by the Registration Agreement that incorporates both the Policy and Rules. The Respondent's repeated violation of the Paragraph 8 of the Rules constitutes a breach of the Registration Agreement and shows a contempt for the mandatory proceeding and the entire domain name registration system.

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 Complainant has the trademark registration of the term “中行” in China. According to a commonly-accepted interpretation of the Policy, Paragraph 4(a) (i), if the Complainant owns a registered trademark then it satisfies the threshold requirement of having trademark rights. The location of the registered trademark and the goods and/or services it is registered for are irrelevant when finding rights in a mark. The relevant decisions may be found at *Uniroyal Engineered Products, Inc. v. Nauga Network Services* (WIPO Case No. D2000-0503) or *Consorzio del Formaggio Parmigiano Reggiano v. La casa del Latte di Bibulic Adriano* (WIPO Case No. D2003-0661).

The domain name in dispute is <中行.com>. When assessing confusing similarity, it is generally accepted to apply an objective test that looks only to the mark and the alleged approximation of the mark. The relevant decisions may be found at *Arthur Guinness Son & Co. (Dublin) Limited v. Dejan Macesic* (WIPO Case No. D2000-1698) or *Dixons Group Plc v. Mr. Abu Abdullaah* (WIPO Case No. D2001-0843). Therefore, the test for confusing similarity should be a comparison between the trademark and the domain name to determine whether they are confusingly similar. Through applying such a test, the Panel finds that the disputed domain name, apart from the gTLD suffix ".com" that has no relevant distinguishing function, is identical with the Complainant's registered trademark.

With respect to the Complainant's claim that “中行” is its corporation name, the Panel holds that the Policy does not address a dispute between a corporation name and a domain name.

The Panel in any event finds that the Complainant has proven paragraph 4(a)(i) of the Policy.

Rights and Legitimate Interests

The Complaint asserts that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent sets out a number of contentions against the Complainant's assertion. The Panel read through both Parties' submissions and has the following discoveries.

The Respondent contends that before being notified of the dispute, it had the preparations to use the domain name. The Panel, however, finds that the Respondent cannot rely on the Policy, Paragraph 4 (c) (i), hence it is not in consistency with its own statements. The Respondent states clearly that the preparation was to create the Respondent's personal blog in respect of the Avenue “中行”. Therefore, the Paragraph 4 (c) (i) of the Policy, which is primarily concerning a Respondent's bona fide use or preparation of use of the domain name to offer goods or services, cannot demonstrate the Respondent's right or legitimate interests in preparing for a personal blog that will have neither goods nor services to offer.

The Respondent contends that the use of the disputed domain name is “non-commercial” and under the Policy, Paragraph 4 (c) (iii), such use may demonstrate the Respondent's right or legitimate interests. However, the Paragraph 4 (c) (iii) of the Policy requires that a Respondent be “making of a legitimate noncommercial or fair use of the domain name”, which expressly excludes the preparation for such use. According to the Respondent's statement, the domain name has been forwarded to its Whois page since acquisition (see the Appendix 6 to the Response). Any domain name has the retrievable registration information recorded in the Whois database. Showing the domain name's registration information recorded at the Registrar's website does not constitute any relevant use. Therefore, the Respondent that has yet to make any use of the domain name can neither rely on Paragraph 4 (c) (iii) of the Policy to prove its right or legitimate interests.

The Respondent's possibly strongest argument for its right over the disputed domain name is that it is named “中行” and commonly known by that name. The Panel finds that the Respondent's claimed name is shown in different Latin forms, including “Zhong Hang L.” (see Whois search page), “Zhang Hong” (see the Response, 7.1) and “Zhong Hang”. Despite the discrepancies on the Latin spelling of the Respondent's claimed name, the Panel pays high attention to the Respondent's claimed name in Chinese, allegedly “李中行”. To prove such claim, the Respondent submitted the email communications with the third parties, online forum registration and most importantly, an ID card. The Respondent specifically requests that the ID information, presumably except the name per se, be kept confidential.

Given that all the decisions made pursuant to the Policy are published by the Center, the Panel restricts from quoting any information, presumably except the name per se, from that ID card. However, if the information on that ID card is truthfully revealing the personal information of the Respondent, the Panel suspects how it can reconcile with the domain name registration information recorded at the Registrar's whois search page (the Appendix 6 to the Response). In accordance with the publicly searchable registration record, the Respondent (domain name holder), under the name "Zhong Hang L.", resides in "Ottawa, Ottawa, Ontario, Ontario, K1G 5A3, CA". Although the scanned copy of the ID card looks very vague and blurred, the Panel can identify that the address on that card is completely different from the domain name registration record. The Policy makes it very clear that any statement that the domain name holder made in the Registration Agreement shall be "complete and accurate". Undoubtedly, providing false contact information seriously violates the Policy. As a result, the Respondent either provided incomplete and/or inaccurate statements when concluding the domain name Registration Agreement, which may result in the cancellation of the domain name by the Registrar, or provided untruthful ID card that does not disclose the genuine identity of the Respondent. Although the Panel is willing to give the Respondent the benefit of the doubt, it must, under the Rules, ensure that the proceeding takes place with due expedition. Therefore, the Panel has to exclude the ID card from the admissible evidence. With respect to the other relevant evidence, such as email exchanges, the Panel finds that their truthfulness and integrity cannot be verified and thus cannot independently prove that "中行" is the personal name of the Respondent. The Respondent also contends that "中行" is the name of an Avenue or District in the city of Taipei. However, the Panel cannot agree with the logic presented by the Respondent. Unless the Respondent may provide the authorization of using the name of the Avenue or District as the domain name from the competent authority, the Panel cannot see any right or legitimate interests from the side of the Respondent on the geographical name. Therefore, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name. Accordingly, the Complainant has proven paragraph 4(a)(ii) of the Policy.

Bad Faith

The Complainant makes several contentions on the Respondent's bad faith. The Respondent makes rebuttals against each. Through assessing the submissions from both Parties carefully, the Panel finds the Complainant's contentions are unconvincing. It is not proven that the Respondent has made any use of the domain name, or ever attempts to sell or otherwise transfers the domain name registration, or registers several domain names so as to show a pattern of conduct. Although the Policy, Paragraph 4 (b), does not limit the circumstances that may prove the registration and use of a domain name in bad faith, the Panel believes that, unless in extraordinary scenarios and for the protection of well-known marks, no bad faith be found beyond the circumstances specifically listed in (i)-(iv) of the Paragraph 4 (b) of the Policy. The Complainant indeed argues that its registered trademark "中行" is a well-known mark and any use of the disputed domain name could potentially infringe its trademark right. The Panel, however, finds that the Complainant is not able to sufficiently prove the reputation of the mark "中行", particularly in the geographical region in which the Respondent resides. The Complainant's submissions on the reputation of "Bank of China" (such as the photocopies of the Awards Tablets) are irrelevant to the dispute that is solely centered with the mark "中行". According to the domain name registration record, the Respondent resides in Ottawa, Ontario, Canada. The Complainant, however, does not provide any proof that how its mark "中行" is used and if the mark is known to the people in that geographical region.

The Panel therefore determines that the Complainant fails to established the third and final element stipulated in paragraph 4(a)(iii) of the Policy which is necessary for a finding that the Respondent has engaged in abusive domain name registration.

Status

www.中行.com

Complaint Rejected

Decision

Since the Complainant does not established 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 rules the Complaint be dismissed.

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