



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

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Decision ID	DE-0800190
Case ID	CN-0800208
Disputed Domain Name	www.chinauniopay.com
Case Administrator	Xinmin Cui
Submitted By	Lulin Gao
Participated Panelist	
Date of Decision	04-09-2008

The Parties Information

Claimant	CHINA UNIONPAY CO., LTD.
Respondent	DEMAND DOMAINS, INC.

Procedural History

On May 28, 2008, the Complainant submitted a first Complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the "Center"), 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") approved by ICANN on October 24, 1999, and Asian Domain Name Dispute Resolution Center Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules") effected on February 28, 2002. The Center confirmed the reception of the Complaint.

On May 29, 2008, the ADNDRC transmitted by email to the Registrar, ENOMFOR INC., a request for registrar verification in connection with the disputed domain name.

On June 5, 2008, the Center received the Registrar's confirmation on registration information of the disputed domain name.

On July 18, 2008, the Center sent the Complaint to the Respondent.

On July 24, 2008, the Complainant submitted supplemental evidence to the Center.

On July 25, 2008, with the Complaint forwarded to the Respondent, the Center notified the parties regarding the commencement of proceedings and had also sent the notification to both ICANN and the Registrar.

On August 12, 2008, the Respondent filed a Response with the Center.

On August 15, 2008, the Center sent the Response to Complainant and Notification for selection of Panelist to the Parties.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. Gao Lulin, on August 18, 2008, the Centre informed the Complainants and the Respondent of the appointment of the Panelist, and transferred the case file to the Panel.

On August 18, 2008, the Panel received the file from the ADNDRC and should render the Decision within 14 days, i.e., on or before September 1, 2008.

The language of the proceedings is English owing to the language of the Domain Name Registration and Service Agreement pursuant to Paragraph 11(a) of the Rules, and considering that it is one of the languages used by the

Complainant when filing the Complaint and that there is no express agreement to the contrary by the disputing parties, or at least no express objection by the Respondent.

Factual Background

For Claimant

The complainant, CHINA UNIONPAY CO., LTD. (“银联”), was established in March of 2002 in Shanghai under the approval of the People's Bank of China and consent from the State Council. It is responsible for operation of the financial infrastructure of inter-banking system for the uniform bankcards and inter-banking information exchanges, liquidation and data processing in the bankcard industry. It also enables users at large to enjoy high quality, safe and efficient bankcard service and safeguards the state financial information.

By the end of 2007, more than 150 institutions in Mainland China have issued over 1.5 billion cards, including 540 million “Unionpay” standard cards, with 740,000 businesses, 1.18 million POS machines and 120,000 ATM machines, which are 3.9, 4 and 2.5 times those at the end of 2001 respectively before the founding of CHINA UNIONPAY CO., LTD. The bankcards are accepted by businesses in large and medium-sized cities and the acceptance rate in medium-sized and small cities are rising rapidly. Along with the growing power of China and the increasing foreign tourism and commercial exchanges, the demand of bankcards is rising. The extensive, safe, convenient, favorable and economic banking network under the trademark “UNIONPAY” is well accepted by more and more users.

“Unionpay” cards are also accepted in 26 countries and regions frequented by Chinese, including Hong Kong, Macao, Singapore, South Korea, the Philippines, Malaysia, Thailand, Germany, France, Spain, Belgium, Luxemburg, Holland, Italy, Switzerland, turkey, Australia, New Zealand, Kazakhstan, Indonesian, Vietnam, Japan, the United States and Egypt. Now, 14 million transactions of worth of 10 billion Yuan are manipulated daily through the inter-banking system of the Unionpay bankcards. CHINA UNIONPAY CO., LTD. has achieved significant progress in universal usage, independent brand construction and internationalization of Unionpay cards so as to ensure rapid and healthy development of the banking card industry in China.

After 2005, the availability of the banking cards is manifested not only in territorial extension but also in expansion in industries closely related to the life of ordinary people. The bankcard industry began to strengthen its cooperation with other sectors and is increasingly used in water, electricity, gas and aviation industries as well as gas stations, hospitals, schools and customs and has brought great convenience to the life of ordinary people. Through extensive exploitation and innovation, electronic payment has extended from traditional channels of ATM and POS machines to integrated payment systems of Internet, mobile telephones, fixed telephones, self-service terminals and other emerging modes of payment on the basis of POS and ATM machines.

The complainant has invested a great deal of funds in promotion of Unionpay cards, with 15.91 million Yuan advertising expenditure in 2003 and 117.44 Yuan advertising expenses in 2006.

The English translation of “银联” is UNIONPAY, among which “UNION” means “combination” and “federation” while “PAY” means “payment”. “UNIONPAY” ideally embodies the meaning and function of the bankcard. Since its foundation, the complainant has been using the Chinese “银联” and the English “UNIONPAY” in business promotion and intellectual property protection. A search on Google with “unionpay” being the key word can result in information about the complainant's web sites along with “银联”. UNIONPAY refers to “银联” and “CHINA UNIONPAY” stands for “中国银联”.

The Complainant has registered trademarks “UNIONPAY”, “UNIONPAY AND Device” and “银联 and Device” in Mainland China, and the trademark “UNIONPAY” was first registered on August 21, 2003. In addition, the trademarks “UNIONPAY”, “CHINA UNIONPAY” and “UNIONPAY银联” have been registered in Mexico, South Korea, New Zealand, the United Arab Emirates, Thailand, Taiwan, Malaysia, Hong Kong, Macao, the European Union, Indonesian, Uzbekistan, Monaco, Croatia, Mongolia, Brunei, Iran, Switzerland, the United States, Australia, Russia and Japan.

On June 22, 2005, the Trademark Office of the State Administration for Industry and Commerce recognized the trademark “银联” as a well-known trademark in its No. 55 [2005] Approval.

“UNIONPAY” is the English translation of the complainant's trade name. On all the registration certificates in foreign countries, it is indicated that the English name of the registrant is CHINA UNIONPAY CO., LTD.

The complainant also registered many domain names containing “chinaunionpay”, including chinaunionpay.com, chinaunionpay.com.cn, chinaunionpay.net, chinaunionpay.net.cn, chinaunionpay.org.cn, chinaunionpay.biz and chinaunionpay.org. The complainant's website is www.chinaunionpay.com, which provides on-line payment service.

For Respondent

The Respondent registered the disputed domain name on October 16, 2007.

Parties' Contentions

Claimant

In the disputed domain name “chinauniopay.com”, “.com” is the suffix of the domain name while “China” is a universal word for “中国”. Therefore, the identifying part of the disputed domain name is “uniopay”, which is confusingly similar to the complainant's registered trademark and its English trade name in both letter combination and pronunciation. The difference in only one letter between “chinauniopay” and “chinaunionpay” is insufficient to reduce the confusing similarity between the two trademarks. They are likely to cause confusion so as to infringe upon the complainant's prior rights and the interests of consumers.

In addition, the respondent's registration and use of the disputed domain name are in bad faith. The respondent parked the disputed domain name “chinauniopay.com” after registration. Internet users, who know the complainant's trademark or trade name, may encounter advertising page through the disputed domain name. In reality, some owners of domain names gain profits for the number of clicking on advertising on their parking websites. Therefore, the respondent tries to take advantage of other's reputation in an improper manner, which shows bad faith of the respondent in its use of the disputed domain name. At the same time, such sentences as “This domain may be for sale. Buy this Domain.” are written on the parking webpage. Clicking on the entries, you will get a price sheet, which shows the intension of the respondent to sell the disputed domain name to uncertain public and its obvious bad faith in registration of the disputed domain name.

Since the respondent enjoys no exclusive trademark right, corporate name right or other rights and the registration date of the disputed domain name is posterior to that of the complainant's trademarks, it has no lawful rights and interests in the disputed domain name.

The respondent's registration of a domain name “uniopay” extremely similar to the complainant's trademark and trade name “unionpay” constitutes imitation of the complainant's English version of the well-known trademark and is likely to cause confusion in the public so as to gain profits through the domain name. Its act, which is obviously in bad faith, shall be prohibited by laws.

Thus, the disputed domain name in this case shall be transferred to the complainant.

Respondent

The Respondent respectfully disagrees with Complainant's assertion that Respondent acted in “bad faith” in registering the domain name “chinauniopay.com”. Respondent was not aware of Complainant's purported trademark rights for “UNIONPAY” when it assumed registration of the “chinauniopay.com” domain name and was not made aware of Complainant's concern until receipt of the Complaint in the current UDRP action.

Thus, the Respondent respectfully requests that the Panel dismiss the complaint inasmuch as the Respondent has acted only in good faith. Upon dismissal, Respondent agrees to immediate transfer of “chinauniopay.com” to the Complainant.

In the alternative, the Respondent respectfully requests that the Panel refrain from making any formal finding that the Respondent acted in “bad faith”. Rather, the Respondent respectfully requests that the Panel simply endorse the Respondent's offer to transfer “chinauniopay.com” to Complainant.

Findings

According to Paragraph 4(a) of the Policy, in order to obtain support for the complaint against a domain name registered by the Respondent, the Complainant must prove each of the following: (i) That the domain name of the Respondent's is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and (ii) That the Respondent has no rights or legitimate interests in respect of the domain name; and (iii) That the domain name has been registered and used in bad faith.

Identical / Confusingly Similar

Rights and Legitimate Interests

Bad Faith

Usually, the Panel will examine whether the three elements of Paragraph 4(a) of the Policy have been met before making a decision. However, the Panel notices that this case at issue seems particular from the normal one. In this case, the Respondent in his response did not deny that the disputed domain name is similar to the Complainant's registered trademark, nor did assert he has rights and interests in the disputed domain name. However, the Respondent denied its bad faith in registering the disputed domain name. In addition, the Panel notice that the remedy put forward in the Complaint is to transfer the disputed domain name to the Complainant. On the other hand, the Respondent does not oppose such transfer, and the Respondent even expressly proposes such transfer.

Confronted with such a situation that seems not expressly prescribed in the Policy or the Rules, the Panel believes the Panel should make a decision on the proper course of action. Specifically, the Panel needs to decide: (1) whether a consent of the Respondent to transfer justifies an order to transfer the disputed domain name; or (2) whether, notwithstanding the consent of the Respondent to transfer the domain name, each element of Paragraph 4(a) must be proven, in order to justify an order of transfer.

After further study of the Policy and the Rules, the Panel notices Rule 10 (a) of the Rules provides that “the Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules.” According to this Rule 10 (a), the Panel shall have the right to deem what is an appropriate manner to conduct the administrative proceeding at its own discretion. In addition, Rule 10 (c) of the Rules requires the Panel to “ensure that the administrative proceeding takes place with due expedition” . The Panel is of the view that conducting the administrative proceeding with due expedition is not only the explicit prescription of the Rules, but also in full conformity with the spirit and principles of the Policy and the Rules.

According to the above-mentioned Rules, the Panel holds the view that the Panel may consider making a decision to transfer the disputed domain name to the Complainant without further examining the three elements of Paragraph 4 (a). In fact, the Panel notices that some similar cases have already been decided previously, where the Panels of WIPO have made decisions to grant the remedy requested by the Complainant to transfer the domain name on the basis of the Respondent's consent without reviewing the three elements of Paragraph 4 (a). (Port Aventura, S.A. v. Demand Domains, Inc., WIPO Case No. D2008-0176; the Cartoon Network IP, LLLP v. Mike Morgan, WIPO Case No. D2005-1132; Williams-Sonoma, Inc. v. EZ-Port, WIPO Case No. D2000-0207).

However, the Panel also holds the view that the Panel should look into some details of the facts before making a decision to transfer the disputed domain name. Specifically, the Panel has to confirm that the Respondent is the true owner of the disputed domain name, and it is the true intention of the Respondent to transfer the disputed domain name to the Complainant.

According to the materials in hand, the Panel notices that the domain name Registrar has confirmed that the Respondent is the true owner of the disputed domain name. In addition, the evidence provided by the Respondent reveals that the Respondent proposed an amicable settlement of the dispute, offering to transfer the disputed domain name to the Complainant without charge. Since the Complainant did not challenge the authenticity of said evidence, the Panel takes the view that the email communications provided by the Respondent are true. In addition, the Respondent in his response has requested that the Panel endorse Respondent's offer to transfer the disputed domain name to the Complainant and makes no finding of bad faith against it. Furthermore, according to the evidence provided by the Respondent, the Complainant does not oppose the transfer of the disputed domain name, and the Complainant's mere concern seems to be the technical problem of the transfer.

In addition, the Panel notices that although the Respondent has consented to transfer the disputed domain name, the Respondent and the Complainant do not achieve a mutual agreement for settlement of the dispute yet. Rule 12 of the Rules permits the Panel to require further statements from the parties. In accordance with Rule 10 and Rule 12, the Panel appears to have authority to delay the decision and permit the parties to submit confirmation that they have agreed to a settlement. That procedure, however, would delay making this proceeding and impose unnecessary cost on both the parties and the arbitration center. Under the circumstances, the Panel believes that the better course is to enter an order granting the relief requested by the Complainant so that the transfer may occur without further delay.

Therefore, based on the Respondent's consent to transfer and the reasons above-mentioned, the Panel decides to order an immediate transfer of the disputed domain name to the Complainant pursuant to Rule 10 of the Rules.

Status

www.chinauniopay.com

Domain Name Transfer

Decision

For the foregoing reasons, in accordance with Paragraph 4 (i) of the Policy and Rule 15 of the Rules, the Panel requires that the domain name “chinauniopay.com” be transferred to the Complainant.

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