



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

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Decision ID	DE-0900235
Case ID	CN-0900253
Disputed Domain Name	www.unionpay.com
Case Administrator	lvyang
Submitted By	Nigel Li
Participated Panelist	

Date of Decision	15-05-2009
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The Parties Information

Claimant	China UnionPay Co., Ltd.
Respondent	Telling Company

Procedural History

1. Complainant of this Case is China Unionpay Co., Ltd., with its address at CUP Mansion, No. 36, Hanxiao Road, Pudong New District, Shanghai City, China. Respondent is Telling Company, with its address at Wuhan, China. The domain name at issue is “unionpay.com.” The Registrar of the domain name at issue is GODADDY.COM, INC.
2. On February 19, 2009, Asian Domain Name Dispute Resolution Center, Beijing Office (the “ADNDRC Beijing Office”) received a Complaint filed by Complainant in accordance with the Uniform Domain Name Dispute Resolution Policy of ICANN (the “Policy”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules of Procedure”), and the ADNDRC Supplemental Rules of the Policy (the “Supplemental Rules”), in which Complainant requested that a single panelist be appointed and formed as the Panel for review of this Case.
3. On February 19, 2009, ADNDRC Beijing Office sent an email to Complainant for confirmation of receipt of its Complaint. On the same day, ADNDRC Beijing Office emailed the Registrar a letter of request for assistance in confirmation of the registration information of the domain name at issue.
4. On February 20, 2009, the Registrar replied to ADNDRC Beijing Office and confirmed that (i) the services were provided by it with respect to the registration of the domain name at issue, (ii) Respondent is the registrant of the domain name at issue, and (iii) the governing language of the registration agreement was English. On the same day, ADNDRC Beijing Office forwarded a copy of the Complaint to Respondent by email.
5. On March 4, 2009, ADNDRC Beijing Office sent notices to both parties for acknowledgement of receipt of the Complaint and service of process thereof, and for confirmation that the Complaint has been reviewed for transmittal to Respondent and the proceeding for this Case shall be formally commenced as of March 4, 2009. On the same day, ADNDRC Beijing Office sent notices to the Registrar and ICANN for commencement of the proceeding.
6. On March 24, 2009, ADNDRC Beijing Office sent an email to Respondent for confirmation of receipt of its Response.
7. On March 27, 2009, ADNDRC Beijing Office emailed a copy of the Response to Complainant, and sent both parties a list of proposed panelists for the Panel.
8. On April 8, 2009, ADNDRC Beijing Office sent notices to both parties and Mr. Nigel N.T. Li for appointment of the panelist, by which Mr. Nigel N.T. Li was appointed as the sole panelist for the Panel for review of this Case. On the same day, ADNDRC Beijing Office transferred this Case to the Panel.
9. On April 20, 2009, ADNDRC Beijing Office forwarded to Respondent the Panel’s request for its business license and other operational information.

10. On April 24, 2009, ADNDRC Beijing Office received from Respondent the supplemental materials.

11. According to the provisions of the Rules of Procedure, the Administrative Panel Decision shall be made no later than (inclusive of) May 7, 2009.

Factual Background

For Claimant

1. Complainant is China Unionpay Co., Ltd., who obtained the registration in China of its trademark “unionpay” as early as on August 21, 2003, for Class 41.

For Respondent

2. Respondent is Telling Company, who registered the domain name “unionpay.com” on November 18, 2005.

3. According to the attachments and exhibits produced by both parties, the factual background of this Case is summarized as follows:

3.1 Complainant obtained the registration in China of its trademark “unionpay” on August 21, 2003, for Class 41. After Respondent’s registration of the domain name at issue, Complainant secured other four registrations of the trademark “unionpay” for Classes 36, 41 and 42.

3.2 Prior to the date of registration by Respondent (i.e., November 18, 2005), Complainant secured registrations of (i) the trademark “unionpay” (which is also the distinctive part of Complainant’s corporate name in English) in such countries and regions as Hong Kong, Thailand, Malaysia and Macao, and (ii) the trademark “China Unionpay” in Thailand, Malaysia, Singapore and Norway, and (iii) the trademark “unionpay银联 & Device” in Brunei, Mexico and Monaco.

3.3 On June 22, 2005, Complainant’s trademark of “银联” was recognized by the Trademark Office of the State Administration of Industry and Commerce as a well-known trademark in China.

3.4 The advertisement materials produced by Complainant with respect to its trademark of “unionpay,” including copies of domestic newspapers, journals, magazines, internet news, press media, broadcasting and TVs, are all later than the date of Respondent’s registration of the domain name at issue. In the English news reports, as produced by Complainant, which were released between October 2004 and January 2005, with respect to bankcards issued offshore, the words “China Unionpay Cards,” “Unionpay Cards” and “Unionpay” were used.

3.5 According to the Notary Certificate issued by Fang-Yuan Notary Public Services (a copy of which was produced by Complainant), it was certified that, on February 4, 2009, when the notary public keyed in the domain name at issue onto the IP address of an IE browser, the notary public was directed to a website with the URLs at www.555.che.com.

3.6 According to the Notary Certificate issued by Fang-Yuan Notary Public Services (a copy of which was produced by Complainant), it was certified that, on November 11, 2005, a web user named “popular” alleged that it obtained the registration of the domain name at issue, and the signature column of the web user with the said ID indicated that “I ceased selling domains registered ten years ago, set limit to the sales amount of domains registered five years ago, and sell domains registered within five years in a large amount. QQ: 70620. Welcome visiting China Sucai Net, www.sucanet.com.” It is also noted that, according to the Form of Registration of Internet Service Providers for Computer Information Networks submitted by Respondent as Attachment Three, “www.sucanet.com” was also registered by Respondent with the relevant authority of Wuhan Public Security Bureau for use as one of its website resources.

3.7 Respondent produced six snapshots of the website, demonstrating that the domain name was resolved onto the website for a knowledge database for group purchase.

3.8 According to the Form of Registration of Internet Service Providers for Computer Information Networks (the “Registration Form”), as produced by Respondent, (i) the registrant of the domain name at issue was Telling Company, Wu Peng (an individual), (ii) the nature of service for the said website was non-commercial ICP, (iii) the website resources are www.sucanet.com (which is identical to the website indicated in the signature column of the web user “popular”), China Sucai Net, IP address at 219.139.240.91, and www.unionpay.com, website for knowledge database for group purchase, 219.139.240.91, and (iv) a brief introduction to the information offered at the website using the domain name at issue includes that “website for knowledge database for group purchase, non-profit website, introduction to knowledge related to group purchase, news for group purchase, group purchase for auto, group purchase

for houses, legal information for group purchase.” The date of filling out the Registration Form was November 6, 2006, and the date of Internet hosting was March 15, 2006, and the expiration date was March 15, 2007.

3.9 Respondent produced a copy of the escrow agreement for server hosting between Respondent and Zhong-dian-ke Chang-jiang Data Co., Ltd. as of March 20, 2006, showing that the duration was from March 20, 2006 to March 19, 2007, for a fee of RMB 5,000, which has been paid up.

3.10 Respondent produced a copy of the website construction contract with Wuhan New Net Technology Development Co., Ltd., dated July 2, 2008, showing that the purported service was for redesign and construction of the website for knowledge database for group purchases, for a contract price totaled RMB 3,000, with a down payment of RMB 1,000 paid. The requirements for website construction and the disk containing the website data were attached to the contract.

3.11 Respondent produced an invoice issued by Chengdu Ming-Xiao Network Technology Limited, dated January 14, 2009, of which the customer was Respondent and which was made for the services for construction of the group purchase website “unionpay.com” with a remark that the deposit was 30%, and the balance would be paid when the services are delivered and accepted.

Parties' Contentions

Claimant

1.1 The effective part of the disputed domain name is identical with the trademark in which the Complainant has prior rights.

(a) Headquartered in Shanghai, Complainant was founded in March 2002 as a bankcard association under the approval of the State Council and the People's Bank of China. In 2004, Complainant built up a national unified inter-bank transaction settlement system for bankcards in China, and is now prepared to become an international bankcard association.

(b) Complainant first obtained the registration in China of the trademark of “unionpay” on August 21, 2003, for Class 41. The earliest offshore registration by Complainant of the trademark “unionpay” was made and granted in Hong Kong on November 3, 2003. Both were earlier than the date of Respondent's registration of the domain name at issue (i.e., November 18, 2005). Complainant subsequently secured registration of the same trademark for other Classes (e.g., Classes 36, 42), and of a series of trademarks of “UNIONPAY,” “银联,” “China UnionPay” and “银联 UnionPay & Device” in China, Hong Kong, Malaysia, Thailand and many other countries and regions. “Unionpay” has also been used by Complainant as the distinctive part of its corporate name in English and its house mark. Significant amount of efforts has been spent by Complainant in marketing these trademarks worldwide for years.

(c) The effective part of the disputed domain name, i.e., unionpay is identical with the trademark owned by Complainant. Therefore, Complainant shall have the priority right and the element under Paragraph 4(a)(i) of the Policy is fulfilled.

1.2 The Respondent has no rights or legitimate interests in respect of the disputed domain name.

(a) According to Complainant's research, Respondent, Telling Company, has no trademark rights or other legitimate interests in the term “unionpay.” In addition, Complainant has never authorized Respondent to use the said mark. Therefore, Complainant asserts that Respondent has no rights or legitimate interests in respect of the domain name at issue.

1.3 The domain name was registered and is being used in bad faith.

(a) Complainant enjoys high reputation over its marks “unionpay” and “银联” in domestic market and many foreign countries and regions. Since its formation under the approval by the State Council and the People's Bank of China, Complainant has been developing the bankcard sector, making China become the market with the fastest growth in the relevant industry worldwide. Because of its special market position, Complainant has been attracting a great amount of public attention even since its establishment.

(b) By the end of 2008, more than 1.8 billion cards were issued by 196 domestic member banks, using Complainant's trademarks on such cards. The number of domestic CUP merchants totaled 1,180 thousand with 1,850 thousand POS terminals, and ATMs reached 160 thousand, increased by 7.8, 8.4 and 4.2 times respectively over the end of 2001. For the year of 2003 alone, Complainant spent RMB 15,910,000 in advertisement and related activities. The cost was increased to RMB 117,440,000 in 2006. In 2005, Complainant's trademark of “银联” was recognized by the Trademark Office of the State Administration of Industry and Commerce as a well-known trademark in China. Complainant has also rolled out its marketing plan offshore, and more than 200 domestic and overseas members have been built up as a bankcard association. With Complainant's trademark on such bankcards used by millions of

cardholders, it only alludes to the fact that the public has been familiar with Complainant’ s trademark “unionpay.”

(c) According to the Who-is Record, the domain name at issue was registered by Telling Company, which is located at Wuhan City, China, with a phone number showing that it is a Chinese subscriber. Clearly, Respondent is a Chinese entity, which must be aware of Complainant’ s trademark “unionpay” of which high reputation in China has been built up through years of efforts by Complainant. When searching “unionpay” at Google, 35,500,000 pieces of information could be found, all of which are news, reports or service information related to the Complainant. Therefore, “unionpay” as the distinctive part of the domain name at issue is associated with, and only with, Complainant.

(d) Moreover, a chatting record was found at the website www.domain.cn (which is a website for, among others, domain name sales). According to the chatting record, in response to a question, a web user (named as “popular”) admitted that it acquired the domain name of “unionpay.com,” and said that “I ceased selling domains registered ten years ago, set limit to the sales amount of domains registered five years ago, and sell domains registered within five years in a large amount.” Based on such record, Complainant asserts that Respondent should be or at least has certain relationship with the web user “popular,” which is clearly a cyber squatter making profits by way of registering and selling domain name. In other words, Respondent registered the domain name at issue only for the purpose of selling the same, which should be deemed as registration out of bad faith.

(e) At present, the disputed domain name is linked to the website www.566che.com, which was found as an auto trading website. Whenever a web user goes to www.unionpay.com, the web page would be automatically turned to the said auto trading website. Therefore, by registering the domain at issue, Respondent may profit from selling the said domain to Complainant or third parties, and from luring web users to visit the auto trading website before the domain is successfully sold.

(f) In light of the above and given that “unionpay” is a coined word, chance is slim for any other party to design a trademark or domain name identical or similar thereto, and there is no reasonable explanation for Respondent’ s registration of the disputed domain name other than profiting from the goodwill associated with the brands of Complainant’ s bankcards. Respondent’ s registration of the domain name at issue was out of nothing but bad faith.

1.4 Complainant produced the following documents as attachments to its Complaint and exhibits for this proceeding:

(a) Attachment I: Power of attorney;

(b) Attachment II: The Who-is Search Record of the domain name at issue;

(c) Attachment III: The introduction to Complainant downloaded from the website of Complainant, www.chinaunionapay.com;

(d) Attachment IV: Copies of the registration certificates of “unionpay” series marks in China;

(e) Attachment V: Copies of the registration certificates of “unionpay” series marks in other countries/areas;

(f) Attachment VI: A copy of the notice of the Trademark Office;

(g) Attachment VII: Publication lists of Complainant’ s card advertisements and copies of advertisements (in excerpt) published in domestic and foreign markets in recent years;

(h) Attachment VIII: The notarization paper to the printouts of the chatting record on the website www.domain.cn, and its translation;

(i) Attachment VIII: The notarization paper to the website under the disputed domain name, and its translation;

(j) Attachment IX: Printouts of the first ten results when searching for “unionpay” on GOOGLE;

(k) Attachment X: The NAF decision Victoria’ s Secret et al v. Atchinson Investments Ltd., Case No. 96496; and

(l) Attachment XI: The Registration Agreement Incorporating the ICANN Policy of the Registrar.

Respondent

2.1 Complainant (China UnionPay Co., Ltd.) does not have the prior civil rights regarding the main identical parts of the disputed domain under the Law of China.

(a) Respondent contends that whether Complainant has any right to or interest in the domain name depends on (i) whether Complainant owned any right or interest before the domain name was registered, and (ii) whether such right or interest should be protected by the laws of China.

(b) Respondent claims that, although Complainant produced a lot of certificates and evidentiary materials, they cannot support that Complainant owned any right to or interest in the domain name because of the issue dates thereof. Respondent further argues that whether Complainant's trademark is a well-known trademark is irrelevant in the present context, because the trademark recognized by the Trademark Bureau as a well-known trademark in 2005 was the Chinese mark “银联,” not the trademark of “unionpay.”

(c) Respondent further contends that Complainant did not commence marketing the trademark of “unionpay” until a point in time right before or after the date of Respondent's registration of the domain name at issue. Moreover, the bankcards issued by various member banks did not include any indication of “unionpay.”

(d) Given the above, Complainant does not have any right to or interest in the domain name related to “unionpay.”

2.2 Respondent has rights and legitimate interests in the disputed domain name.

(a) Respondent alleges that the legal ownership of a domain name shall be determined by registering the domain name, rather than by permission by any authority. Complainant registered and used “chinaunionpay.com” as its domain name, and did not proffer any explanation why it did not register “unionpay” in advance. Therefore, whether Complainant has authorized Respondent to register is irrelevant to determination on the ownership of the domain name at issue.

(b) Prior to its registration of the domain name at issue, Respondent was not aware of Complainant's trademark of “unionpay.” No evidence was produced by Complainant showing that Complainant had started marketing or promoting the said trademark before the domain name at issue was registered. The materials and statements produced or made by Complainant in its Complaint with the attempt to prove the high reputation of “unionpay” are in fact related to the Chinese trademark of “银联.”

(c) Respondent further contends that, in addition to the priority in time in registration, it has the right to or legitimate interest in the domain name “unionpay.com” on the basis of the following facts. It built up a non-profit website, using the domain name at issue, to publicize the knowledge of “团购” (which means “group purchase”). When registering the domain name, Respondent combined the word of “union” (which, in Chinese, means “联合、团结、联盟”), and the word of “pay” (which, in Chinese, means “支付、补偿、偿还”), into “unionpay” which Respondent believed would signify or correspond to the concept of group purchase. However, when it initially applied for registration in 2000, Respondent was informed that the said domain name had been registered by a third party. Respondent did not register the domain name at issue until it became available in 2005. It is also noted that other domain names using in part “unionpay” (e.g., union-pay.com) had been registered by other parties. Therefore, the word “unionpay” should be deemed commonly used. Moreover, inquiries by web users were raised at Respondent's website using “unionpay.com.”

(d) In sum, the domain name “unionpay.com” has been legally used and publicized by Respondent, and has attracted appreciation in the relevant industry. Therefore, Respondent has the right to or interest in the domain name at issue.

2.3 Respondent registered and used the domain name without malicious intentions.

(a) Respondent successfully registered the domain name “unionpay.com” on November 18, 2005, and formally placed the said domain name into use on March 15, 2006 at the server with the IP address of 219.139.240.91. It also obtained the registration of internet content provider with the Public Security Bureau of Wuhan City on November 6, 2006. Its website using the domain name at issue was operated as a non-profit and noncommercial knowledge database for group purchase, as shown in the snapshots of the relevant website provided by Respondent. To upgrade and redesign the website, Respondent retained Wuhan New Net Technology Development Co., Ltd. (“New Net”). Because of dissatisfaction of the artworks provided by New Net, Respondent asked another company located at Chengdu for the work of redesigning the website. Concurrently, Respondent sought and rented a new server hosting. All these facts may support that Respondent has registered and used the domain name without any bad faith. However, all these works were interrupted when it received a notice of the Complaint on February 20, 2009.

(b) With respect to Complainant's contention of bad faith based on the facts that the disputed domain was directed to URLs of www.566che.com or the IP address of 219.139.240.91, Respondent rebutted that the IP address was re-assigned by IDC and obtained by “566che.com” when Respondent ceased using the said IP address for redesigning and constructing its own website using the domain name at issue. It was not aware of the re-assignment until this proceeding was initiated.

(c) Respondent denied the relationship between itself and the web user “popular,” which was alleged by Complainant without any proof. It further argued that Complainant did not provide any evidence demonstrating that Respondent gained any profit from registering or selling the domain name at issue, and that Respondent is not a financial service

provider and hence is not a rival of Complainant.

(d) In sum, Respondent contends that Complainant did not proffer any evidence to prove that any of the conditions under Paragraph 4(b) exists, and therefore the Complaint shall be dismissed.

2.4 Respondent produced the following materials as attachments to its Response for this proceeding:

(a) Attachment One: Snapshots of the websites of member banks, bankcards, bill statements and leaflets, all of which are without the mark of “unionpay;”

(b) Attachment Two: Printed sheets of the “unionpay.com” website;

(c) Attachment Three: Unit recording form (which denotes to the “Form of Registration of Internet Service Providers for Computer Information Networks”), escrow agreement and invoice of computer information networks in the People’ s Republic of China in connection with the international network;

(d) Attachment Four: Website construction contract, receipt and the original disk programs of the website “unionpay.com.”

(e) Attachment Five: Initial payment invoice for website construction;

(f) Attachment Six: “Go Daddy” domain name registration agreement;

(g) Attachment Seven: Snapshots of another website “union-pay.com” on 2001; and

(h) Attachment Eight: A copy of Certificate of Incorporation of Respondent and related information.

Findings

1. According to the Registration Agreement between Respondent and the Registrar, Respondent agrees to be bound by the Uniform Domain Name Dispute Resolution Policy (the “Policy”), which shall be applicable to the underlying proceeding to this Case.

2. Paragraph 4 of the Policy provides for the mandatory administrative proceeding for domain name disputes. According to Paragraph 4(a) of the Policy, Complainant must prove each of the following elements is present:

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

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

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

Identical / Confusingly Similar

3. According to Paragraph 4(a)(i) of the Policy, a determination shall be made as to whether Respondent’ s domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

4. It has been demonstrated by the exhibits produced by Complainant that Complainant owns the registered trademark of “unionpay” and “银联” , and that it has also secured the protection through registrations for its trademarks of “unionpay” , “china unionpay” and “unionpay银联” in many other countries and regions. It is further noted that Complainant secured its exclusive right to the registered trademark of “unionpay” as of August 21, 2003, which was earlier than the date when Respondent registered the domain name at issue (i.e., November 18, 2005). Therefore, Complainant is entitled to the right to the trademark of “unionpay.”

5. The domain name at issue is “unionpay.com.” By a comparison with Complainant’ s trademark of “unionpay,” the only discernible difference will be the words “com,” which however, is merely a gTLD postfix commonly used for denoting to the top level domain bearing no significance in determining the issue of confusing similarity. The distinctive part of the domain name at issue would be “unionpay,” which is identical to the trademark owned by Complainant.

6. Given the above, the Complaint filed by Complainant has already satisfied the first element under Paragraph 4(a) of the Policy.

Rights and Legitimate Interests

7. According to Paragraph 4(a)(ii) of the Policy, a determination shall be made as to whether Respondent has any right or legitimate interest in respect of the domain name.

8. In the instant Case, Complainant has produced exhibits in support of the facts that it owns the legal right to the trademark of “unionpay” as relevant to the domain name at issue. Complainant has also elucidated that it has never authorized, by any means, any third party to apply for any domain name using such trademark. Under such circumstances, due considerations should be taken as to the issue of whether the evidence adduced by Respondent is sufficient to prove that Respondent has any right to or legitimate interest in the domain name at issue.

9. According to Paragraph 4(c) of the Policy, any of the following circumstances, in particular but without limitation, if proven by Respondent, shall demonstrate its right to or legitimate interest in the domain name: (i) before any notice to Respondent of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or (ii) Respondent has been commonly known by the domain name, even if Respondent has acquired no trademark or service mark rights; or (iii) Respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

10. Respondent contends that the ownership of a domain name shall be determined by the “first to register” rule, by which any person who has successfully registered a domain name shall be the owner thereof. The Panel is of the view that the registration alone is not a proof that Respondent has any right to or legitimate interest in the domain name at issue because, if such contention were to be upheld, it would have caused all complainants unable to recover, in accordance with the Policy, their ownership interests in domain names registered by other parties in advance. Therefore, Respondent’s above contention shall not be sustained.

11. Respondent contends that, after the registration, Respondent used the domain name at issue in early 2006 for setting up the website for introducing information related to group purchase, and made the registration with the relevant authority of the Public Security Bureau of Wuhan City on November 6, 2006. In July 2008, Respondent retained network service firm to redesign and reconstruct the said website. According to Paragraph 4(c)(i) of the Policy, it is prescribed that, before any notice to the respondent of the dispute, the respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services shall be present. Clearly, the use or demonstrable preparation to use alone (generally made by way of building up a website with the domain name resolved onto an IP address for that website) is not sufficient under Paragraph 4(c)(i) of the Policy. Rather, such use or prepared use must be “in connection with” a bona fide offering of goods or services. In this regard, although Respondent produced copies of six snapshots and the disk program of the website allegedly built up by it using the domain name in early 2006, what these copies and disk program (under the rebuttable assumption for the authenticity thereof) could only prove that there was a use; however, no additional evidence or elaboration was proffered by Respondent to demonstrate the “connection” between such use and its offering of service allegedly for group purchase. Therefore, Respondent’s contention is not compatible with the condition under Paragraph 4(c)(i) of the Policy.

12. Respondent produced exhibits showing that messages were left by five web users for inquiries to information related to group purchase. However, such exhibits are not sufficient to demonstrate that Respondent has been commonly known by the domain name at issue. Therefore, Respondent’s contention by such exhibits is not compatible with the condition of Paragraph 4(c)(ii) of the Policy.

13. Respondent contends that the website using the domain name at issue is a non-profit website for introducing information related to group purchase. It provides a Form of Registration of Internet Service Providers for Computer Information Networks (the “Registration Form”), which has been registered with the Department of Public Information Network Security Surveillance of the Public Security Bureau of Wuhan City, showing that the underlying website is for non-commercial internet content provider. The Panel is of the following views. First, one of the premises laid down under Paragraph 4(c)(iii) is that the respondent “is making” “non-commercial” use of the domain name. According to the Notary Certificate produced by Complainant (Attachment VI), when keying in the domain name at issue into the IP address of an IE browser, a web user will be linked to another website, and not to the website allegedly built up by Respondent for introduction to information related to group purchase. In addition, copies of the six snapshots of the website and the disk program (under the rebuttable assumption for the authenticity thereof) adduced by Respondent are not able to prove that Respondent “is making” a legitimate non-commercial or fair use of the domain name at issue. Second, although Respondent provided the Registration Form registered with the Department at Wuhan, the Registration Form indicated that the registration would be effective only up to March 15, 2007. Given that, the exhibits produced by Respondent is not able to prove that, by providing such internet information service, Respondent is making a legitimate non-commercial or fair use of the domain name at issue. Third, Paragraph 4(c)(iii) requires that the respondent “is making” use of the domain name. Nevertheless, according to the evidentiary materials produced by Complainant, any attempted access to the domain name will be linked to the website of www.566che.com, signifying that the domain name has been used by another website and not by Respondent. Respondent alleged that it was because the IP address was re-assigned to the website of www.566che.com without any notice to Respondent. However,

Respondent did not produce any evidence in support of its allegation. Although Respondent argued that its website for knowledge database for group purchase has been under re-construction, the website construction contract and the invoice related thereto are not evidence that may directly prove that Respondent is making use of the domain name. Under the circumstances that (i) Respondent did not prove that the domain name is not being used for non-commercial purpose, and (ii) the exhibits adduced by Respondent are not sufficient to prove that Respondent is making use of the domain name, the issue of whether Respondent may reasonably argue that the word “unionpay” shall denote to “group purchase” shall no longer affect any determination on the compatibility of Respondent’s contention under Paragraph 4(c)(iii) of the Policy. In light of the above, the Panel finds that Respondent’s contentions are not in conformity with the requirements of Paragraph 4(c)(iii) of the Policy.

14. In addition, Respondent submits that, as early as in 2001, the domain name of “unionpay.com” has been registered by others. The Panel is of the view that the website snapshot as provided by Respondent in Attachment Seven did not include any date or similar indication. Second, the domain name of the said website is “union-pay.com” and not the domain name at issue, i.e., “unionpay.com.” Third, Respondent did not prove the relevancy of the earlier registration of “union-pay.com” to the domain name at issue. Therefore, the exhibits adduced by Respondent are not able to support its contentions that Respondent has any rights or legitimate interest in the domain name at issue.

15. Given that Complainant has proved that it has legitimate interests in the earlier registered trademark to which the domain name at issue is identical, and that Respondent did not demonstrate that it has the right to or legitimate interest in the domain name at issue, the Panel finds that the Complaint filed by Complainant has fulfilled the second element of Paragraph 4(a) of the Policy.

Bad Faith

16. According to Paragraph 4(a)(iii) of the Policy, a determination shall be made as to whether Respondent’s domain name has been registered and is being used in bad faith.

17. According to Paragraph 4(b) of the Policy, the following circumstances, in particular but without limitation, shall be evidence of the registration and use of a domain name in bad faith: (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent’s documented out-of-pocket costs directly related to the domain name; or (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent’s 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 the respondent’s web site or location or of a product or service on the respondent’s web site or location.

18. Upon review of the exhibits produced by Complainant and Respondent, the Panel is of the following views. Complainant’s trademark of “unionpay” has been registered for trademark protection on August 21, 2003, which was prior to Respondent’s registration of the domain name at issue. Complainant has used “China Unionpay Co., Ltd.” as its corporate name in English, and has further registered the trademark of “unionpay” in many countries and regions, and has rolled out various commercial and promotional activities related thereto. Respondent registered the domain name at issue on November 18, 2005. The distinctive part of the domain name at issue (i.e., unionpay) is identical to Complainant’s trademark and corporate name of “unionpay,” which has been widely registered by Complainant in China and many other countries and regions. Moreover, Respondent’s Certificate of Incorporation was granted by Belize as of March 14, 2001, which however does not include any name of the individual acting as the representative of Respondent. Therefore, the authenticity of the corporate registration of Respondent is not beyond doubt. In addition, according to the information related to the domain name of “telling.com” registered under the corporate name of Respondent as of February 13, 1997, the contact person for all four matters is Peng Wu. In other words, before Respondent formally received its Certificate of Incorporation, its domain name had been registered by an individual using the corporate name of Telling. All these facts did not provide any indication as to (i) what type of corporate business Respondent has been doing, (ii) why Respondent allegedly constructed a non-profit website for promoting knowledge related to group purchase, and (iii) what type of relevancy there is between Respondent’s corporate business and its website construction. As a matter of facts, Respondent’s conduct in registering the domain name at issue not only prevents Complainant from registering a domain name using the name corresponding to its trademark and English corporate name, which have been registered or used prior to the registration of the domain name at issue, but also self-demonstrates that there is no other identifiable, independent, justifiable and reasonable cause for such registration. Irrespective of whether there is any possibility that all such allegations may have been fabricated for the purpose of countering the underscored proceeding, no evidence was produced by Respondent to prove the purpose of website construction as alleged by Respondent. Therefore, the condition under Paragraph 4(b)(ii) of the Policy shall be deemed satisfied in the instant Case.

19. Given the above, the Panel finds that the Complaint has already fulfilled the third element under Paragraph 4(a) of the Policy.

Status

www.unionpay.com

Domain Name Transfer

Decision

1. In conclusion, the Panel finds that the Complaint has already fulfilled three elements described in Paragraph 4(a) of the Policy; that is, (i) Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and (ii) Respondent has no rights or legitimate interests in respect of the domain name; and (iii) Respondent's domain name has been registered and is being used in bad faith.
2. According to Paragraphs 3 and 4(i) of the Policy, Paragraph 15 of the Rules of Procedure, and Paragraph 10 of the Supplemental Rules, and other relevant provisions thereof, the Panel hereby decides that the domain name of "unionpay.com" be transferred to and registered for Complainant.

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