



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

[English](#)
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| Decision ID | DE-0400023 |
| Case ID | HK-0400039 |
| Disputed Domain Name | www.太古.com |
| Case Administrator | Iris Wong |
| Submitted By | Michael Hwang |
| Participated Panelist | Michael Hwang Edward Charles Chiasson QC Loke Khoon Tan |
| Date of Decision | 26-07-2004 |

The Parties Information

| | |
|-------------------|---------------------------|
| Claimant | John Swire & Sons Limited |
| Respondent | Tien Fu Chiu |

Procedural History

On 23 February 2004, the Complainant filed a Complaint against the Respondent with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (“ADNDRC”).

On 25 February 2004, ADNDRC informed the Registrar of the disputed domain name, OnlineNIC (the “Registrar”), that a Complaint had been filed against the Respondent.

On 28 February 2004, ADNDRC informed the Respondent that a Complaint had been filed against him.

On 3 March 2004, ADNDRC informed the Respondent that he had 20 calendar days from 3 March 2004 to submit a Response.

On 8 March 2004, the Complainant informed ADNDRC that the disputed domain name had been transferred from the Respondent to one Chiou Sheng Yuan on 26 February 2004, and that, pursuant to Paragraph 8(a) of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Respondent could not transfer the disputed domain name after a Complaint had been filed.

On 9 March 2004, ADNDRC informed the Registrar that the disputed domain name had been transferred in violation of Paragraph 8(a) of the Policy, and asked the Registrar to investigate the issue.

On 10 March 2004, the Registrar informed ADNDRC that, the disputed domain name had been locked, and that the transfer that had been made in violation of Paragraph 8 of the Policy had been rendered invalid.

On 15 March 2004, ADNDRC informed the Complainant that the WHOIS information had been changed to reflect the Respondent as the registrant of the disputed domain name.

On 16 March 2004, the Respondent asked to extend the deadline for submitting a Response to 5 April 2004. The Respondent also asked to submit his Response in Simplified Chinese Language.

On 17 March 2004, ADNDRC informed the Respondent that he could file the Response in the language he found appropriate. ADNDRC also informed the Respondent that the Complainant objected to the extension of time to 5 April 2004, but had agreed to accept a shorter extension of 7 days. Accordingly, the new deadline for the submission of the Response was 30 March 2004.

On 29 March 2004, the Respondent submitted a Response to ADNDRC.

On 29 April 2004, ADNDRC notified the parties of the appointment of a three-member panel consisting of Mr Michael Hwang SC, Mr Edward Chiasson QC and Mr Loke Khoo Tan (the “Panel”).

On 12 May 2004, the Panel requested ADNDRC for an extension of time for rendering the Decision.

On 13 May 2004, ADNDRC notified the parties that the Decision would be rendered on 21 June 2004.

On 16 June 2004, the Panel requested ADNDRC for a further extension of time for rendering the Decision. On the same day, ADNDRC extended the time for rendering the Decision to 28 June 2004.

On 24 June 2004, the Panel requested ADNDRC for another extension of time for rendering the Decision. On the same day, ADNDRC confirmed that the deadline for rendering the Decision had been extended to 12 July 2004.

Both Parties confirmed that no legal proceedings had been commenced by them in conjunction with or in relation to the disputed domain name.

The Panel finds that the Administrative Panel was properly constituted and appointed in accordance with the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) and the ADNDRC Supplemental Rules (the “Supplemental Rules”).

Factual Background

For Claimant

Complainant’s Submissions

The following information derives from the Complaint.

The Complainant is a company incorporated in England. Founded in Liverpool, U.K. in 1816, the Complainant began trading in China in the early 1860s. Its first Far Eastern office was established in Shanghai in 1866. In 1914, the Complainant became a limited company by the name of John Swire & Sons Limited.

The Complainant states that it has global interests, but that its activities are concentrated in the Asia Pacific region. The majority of its businesses in this area come under Swire Pacific Limited and are grouped into five operating divisions: property, aviation, beverages, marine services and trading & industrial. The Swire Group of companies (to which the Complainant belongs) currently employs over 120,000 employees worldwide.

The Complainant states that its full name in Chinese is ‘英国太古有限公司’, with the third and fourth characters constituting the distinctive part of the Complainant’s Chinese name. The use of these characters in the disputed domain name form the subject of these proceedings.

The Complainant states that it has been using the name “太古” for almost 200 years in relation to its businesses all over the world. In particular, the Complainant states that it is the registered proprietor, either in its own right or through its subsidiaries, of numerous trademarks in multiple classes for the “太古” mark in Cambodia, China, Canada, Hong Kong, Malaysia, Taiwan and Vietnam.

Further, the Complainant’s wholly-owned subsidiary in Hong Kong, John Swire & Sons (H.K.) Limited has registered a total of 28 domain names, all of which contains the Complainant’s mark “太古”, such as “太古.net”, “太古中国.com” and “太古香港.com”.

For Respondent

Respondent’s Submissions

The following information derives from the Response.

The Respondent has been identified as one Chiu Tien Fu of HongQi, ShaHe, Guangzhou, Guangdong, China. The Respondent’s e-mail address has been identified in the Complaint as a8@mail.com. The Respondent does not purport to have any authorized representative in the present administrative proceedings, although the Complainant has identified one Henry Yau (“Henry”) of unknown address, telephone number and facsimile number as the Respondent’s authorized representative. The e-mail address of Henry is identified as on888@yahoo.com and 5y@sina.com.

The type of business the Respondent is engaged in is unknown, although it appears that the Respondent has set up a number of non-commercial websites to promote love and charity and care for the human race to the public.

Language of the Proceedings

Paragraph 11 of the Rules provides that “the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. In the present proceedings, the Panel notes that Complainant has submitted his Complaint in English, whereas the Respondent has submitted his Response in Chinese. The Respondent asserts that the language of his Registration Agreement is Chinese, and that accordingly, the language of the proceedings should be in Chinese. However, in view of the fact that the working language of the Panelists is the English Language, the Panel has decided that the language of the proceedings shall be English.

Parties' Contentions

Claimant

Complainant

(a) Name is identical or confusingly similar to a trademark or service mark in which the complainant has rights

The Complainant asserts that the Complaint is based on its registrations for the “太古” mark. The full name of the Complainant in Chinese is “英国太古有限公司”. The Complainant asserts that, since the first two characters of its Chinese name means “England”, while the last four characters are the generic term for “limited company”, the distinctive part of the Complainant’s Chinese name is therefore the third and fourth characters “太古”. The Complainant contends that the two characters “太” and “古” when used together is not a term commonly used in everyday Chinese language, but is an invented name.

The Complainant submits that all the companies within the Swire group incorporate the registered trademark “太古” as part of the companies’ names. The Complainant together with its group of companies are commonly known as, and referred to as “The Swire Group” in English and “太古集团” in Chinese.

The Complainant affirms that it has used the registered trademark “太古” for almost two hundred years throughout the world in relation to its various fields of businesses. Accordingly, the Complainant contends that, it has established a unique and protectable reputation in the “太古” mark, and that the public will associate the “太古” mark exclusively with the Complainant.

The Complainant submits that by comparing the disputed domain name with the Complainant’s mark, it is clear that the disputed domain name has incorporated the Complainant’s mark in its entirety.

(b) Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name because the Respondent’s name is different from the disputed domain name, and the Respondent is not commonly known by the disputed domain name.

(c) Respondent registered and has used the disputed domain name in bad faith

The Complainant submits that the disputed domain name was registered and used in bad faith, and that, the registration of a “.com” domain name signifies a “commercial enterprise”, indicating the Respondent’s intention to use the disputed domain name for a commercial purpose.

The Complainant further submits that, the Respondent was actually a bad-faith pre-emptive registrant, who registered the disputed domain name with the sole purpose of selling, renting, or otherwise transferring the disputed domain name registration for profits. The Complainant submits the following facts in support of this allegation.

The Complainant’s authorized representative sent a “cease and desist” letter by e-mail to the then registrant, Qiu Shengjie, on 15 October 2003. On 16 October 2003, the Complainant’s authorized representative received an anonymous e-mail from the e-mail addresses of 5y@sina.com and on888@yahoo.com, stating that the sender’s friend owned the disputed domain name, and offered to sell the disputed domain name for the price of USD\$100,000. The Complainant states that it was subsequently confirmed that the sender was Henry. The Complainant then offered to reimburse Qiu Shengjie the out-of-pocket expenses incurred by him in registering the disputed domain name. Henry replied by e-mail, confirming his authority to act on behalf of Qiu Shengjie, and stating that USD\$100,000 was the cheapest price he could offer for the sale of the disputed domain name.

Subsequently, the Complainant conducted an updated WHOIS search with the Registrar on 13 January 2004, and found that the registrant of the disputed domain name had changed from Qiu Shengjie to Chen Qingrui. In order to ascertain Henry's authority to act for the new registrant, Chen Qingrui, the Complainant sent an e-mail to Henry on 13 January 2004, asking for his confirmation that he had authority to act on behalf of Chen Qingrui. In an e-mail dated 13 January 2004, Henry repeated his offer to sell the disputed domain name, and confirmed that he had the authority to act on behalf of Chen Qingrui.

Subsequently, the Complainant's authorized representative sent an e-mail to Chen Qingrui, on 20 February 2004, seeking confirmation that Henry had the authority to act on Chen Qingrui's behalf. Henry replied to this e-mail on 20 February 2004 and 22 February 2004, repeating the offer to sell the disputed domain name.

The Complainant relies on the ADNDRC decisions of DE-020006, dated 6 November 2002, concerning the disputed domain name of www.raineandhornecommercial.com and, decision DE-020002, dated 3 August 2002, concerning the disputed domain name of www.hktdc.com. In DE-020006, the Panel decided that the respondent's offer for the sale of the said domain name at a cost ten times greater than his out-of-pocket expense was unreasonable, and held that the respondent did not register the said domain name in good faith. In DE-020002, the Panel decided that the respondent's offer of USD\$1,500 for the sale of the disputed domain name was made in bad faith under paragraph 4(b)(i) of the Policy.

Applying the two ADNDRC decisions above, the Complainant asserts that, it is clear from the Respondent's conduct that, the Respondent acquired the disputed domain name primarily for the purpose of selling or otherwise transferring the disputed domain name registration to the Complainant for valuable consideration, in excess of the Respondent's out-of-pocket costs directly related to the disputed domain name.

The Complainant submits that the Respondent deliberately registered the disputed domain name in order to prevent the Complainant from reflecting its marks and services in a corresponding domain name, under paragraph 4(b)(ii) of the Policy.

Respondent

Respondent

The Respondent submits that there is already a definitive ruling on the disputed domain name in *John Swire & Sons Limited v Lily Zhu* (WIPO Case No. D2001-1025), which was decided on 31 January 2002 (involving the same lawyer as in the present case, Ms. Rosita Y.M. Li). In that case, the Panel found that the Complainant had not established its case and dismissed the Complaint.

(a) Name is identical or confusingly similar to a trademark or service mark in which the complainant has rights

The Respondent asserts that, when it registered the disputed domain name, it had not heard of the Swire Group, and that it was not aware of the existence of the “太古” trademark. Further, the Respondent states that he had never received information about either the Swire Group or the existence of the “太古” trademark.

The Respondent rejects the Complainant's assertion that the use of the two characters “太” and “古” together does not constitute a commonly used term in the Chinese language. The Respondent asserts that “太古” is a term that connotes “attributes” or “qualities”, and is a commonly used term. According to the Modern Chinese Dictionary, which was compiled by the Linguistics Institute's Dictionary Editorial Office in the Chinese Academy of Social Studies, the meaning of the term “太古” is “the most ancient era”. Other dictionaries have defined the phrase simply as “ancient era”, with a Chinese-English dictionary translating the term as “remote antiquity”. The Respondent also submits that, a search on the term using the search engine, www.google.com, reveals a large number of results (almost 205,000 hits), the majority of which bear the meaning of “remote times” or “ancient era”, further indicating that the term “太古” is commonly-used. In support of its contention, the Respondent highlights numerous uses of the term in book titles, school names and company names.

The Respondent asserts that the Complainant, being a company which operates on a global scale, should have been able to register the disputed domain name within the 2 years and 10 months that have passed since the prior registration of the disputed domain name lapsed. The fact that the Complainant did not register the disputed domain name indicates that, the Complainant is simply seeking to reap the benefits of the Respondent's labour without expending any effort of its own. The Respondent argues that, as the Complainant is an English company, the Chinese name of the Complainant is not as important as its English name, and that, as the Complainant is already the registrant of various English domain names in relation to the Swire Group, the Chinese domain name should be reserved for the Chinese people.

The Respondent contends that, the Swire Group is not well known outside of Hong Kong, and that few people know of the Swire Group, even in Mainland China. The Respondent submits that it was unaware of the existence of the Swire Group, and that as the Respondent's registration of the disputed domain name was not for the purpose of using the disputed domain name in Hong Kong, the Complainant's rights will not be affected.

Apart from the decision of *John Swire & Sons Limited v Lily Zhu* (WIPO Case No. D2001-1025), as mentioned above, the Respondent relies on four other cases, in support of its contention that a reputable company cannot rely on its trademarks or reputation to deprive another individual or company of its validly registered domain name.

The Respondent submits that the decision in *Google.com v Google.com.cn* (2003) 贸仲域裁字第0006号 shows that a company cannot rely on its trademarks or reputation to deprive another individual or company of its rights. The Respondent contends that *google.com* is the largest search engine globally, and is second only to *yahoo.com* in terms of the number of hits per day. *google.com* receives over a million search requests a day. In comparison, the Complainant's website receives a substantially smaller number of hits a day. In terms of global importance and reputation, *google.com* and the Complainant's website are incomparable. Nevertheless, *google.com*'s complaint in relation to the domain name <*google.com.cn*> was rejected.

The Respondent submits that the decision in *QQ.com v qq.com.cn* (CIETAC Case No. CND0300003) similarly illustrates that a company cannot rely on its trademark or reputation to deprive another individual or company of its rights. The Respondent submits that *QQ.com* is China's most well known instant messaging service, and that the company is also in the enterprise real-time communication and entertainment information management business. The Respondent submits that, although *QQ.com* is reputable and receives many hits, *QQ.com*'s complaint against *qq.com.cn* was also rejected.

In the case of *Paradox Security Systems Ltd. v. Paradox.com.cn* (CIETAC Case No. CND0200004), the Canadian company, *Paradox Security Systems Ltd.*'s complaint against *paradox.com.cn* was similarly rejected.

In *GM v Hummer.com.cn* (CIETAC Case No. CND0300015), GM's complaint against *Hummer.com.cn* was also rejected. The term "Hummer" was registered by GM as a trademark, and was the name of a brand of trucks manufactured by GM. GM argued that because the "Hummer" trademark was well known internationally, and that it had rights in the trademark. The Respondent asserts that, although GM was the world's largest company then, it could not deprive another individual or company of its rights.

(b) Respondent has no rights or legitimate interests in respect of the disputed domain name

The Respondent submits that he has expended money, effort and time in registering the disputed domain name. Accordingly, the Respondent asserts that he has rights and legitimate interests in the disputed domain name. In particular, the Respondent relies on paragraphs 4(c)(i) & 4(c)(ii) of the Policy to demonstrate his rights and legitimate interests in the disputed domain name.

The Respondent submits two reasons for registering the disputed domain name. First, the Respondent previously owned the domain name *eonlove.com* and the Chinese name of *eonlove.com* was "太古之爱", the Respondent registered the disputed domain name with the intention of using it as part of the "Tai Gu Love & Charity Web". As the Chinese domain name system was not yet operational when the Respondent registered the disputed domain name, and as the Respondent was a member of the Fortune Culture Reading Club, the Respondent decided to re-direct visitors of his website from the disputed domain name to <http://www.humanbliss.com.sg/index.asp>. Subsequently, visitors to the disputed domain name website were directed to *eonlove.com*. *eonlove.com* would then be re-directed to the "Chinese Love Web" at <http://www.lovesino.com/cat/1.html>. The Respondent asserts that this chain of re-direction was already in place before the Complaint was filed. The Respondent contends that he has used the disputed domain name, and that the disputed domain name has acquired a certain reputation. The Respondent submits that, accordingly, it can be seen that the Respondent's objective in registering the disputed domain name was not for commercial gain, but to build up the "Tai Gu Love & Charity Web". The Respondent submits that registering the disputed domain name was part of his plans to promote love, charity and care for the human race.

Second, the Respondent registered the disputed domain name because the Respondent's loved one had a nickname called "太古", and the Respondent's loved one's e-mail address "taigu5@hotmail.com" also uses the term "太古". As "太古" in hanyu pinyin is "taigu", the Respondent submits that he had a special liking for the term "taigu". The Respondent submits that two e-mails from "taigu5@hotmail.com" to the Respondent dated 28 March 2004 and 29 March 2004 prove the link between the Respondent and his loved one, and that the disputed domain name had been in use and had become well known since the time the Respondent registered the disputed domain name.

The Respondent submits that the disputed domain name was part of the "Tai Gu Love & Charity Web", with the objective of "eon love" or enduring love. The Respondent submits that he would never use the disputed domain name for commercial gain. The Respondent further submits that, from the time the disputed domain name was registered, and well before the Complaint was filed, the disputed domain name was already in use. The Respondent contends that as the disputed domain name was used for non-profit & non-commercial purposes, and had gained a certain reputation, the Respondent had rights and legitimate interests in the disputed domain name.

(c) Respondent registered and has used the domain name in bad faith

The Respondent relies on paragraphs 4(b) and 4(c)(iii) of the Policy to show that it did not register and use the disputed domain name in bad faith. The Respondent submits that it had never, prior to the Complaint being filed, made any contact with the Complainant. Accordingly, the Complainant's assertion that the Respondent had previously been in contact with the Complainant is incorrect, and the contents of the correspondence are without truthful basis. The Respondent submits that he does not attest to the validity of the correspondence. The Respondent contends that the party who formerly held itself out as having the authority to act on behalf of the Respondent in its correspondence with the Complainant may have been a) a party attempting to cause trouble; b) a domain name resale broker; c) a party who was related to the previous case of John Swire & Sons Limited v Lily Zhu (WIPO Case No. D2001-1025); d) a party that missed the opportunity to register the disputed domain name and was therefore seeking revenge; e) an invented and non-existent person; f) a person related to the Complainant; or g) a person seeking to take advantage of the situation. The Respondent submits that the Complainant has been unable to adduce evidence linking the Respondent with the person purporting to have the authority to act on behalf of the Respondent.

The Respondent contends that he sent e-mails to the persons whom the Complainant alleged had offered to sell the disputed domain name, at the e-mail addresses of "5y@sina.com" and "on888@yahoo.com". The Respondent submits that in those e-mails, the Respondent denied having any relationship with those persons who purported to have the authority to act on the respondent's behalf. The Respondent further submits that he has never procured the assistance of a third party in relation to domain name matters. These e-mails were also sent to "hkiac@adndrc.org" and to the Complainant's authorized representative at the e-mail address of "rosita.li@jsm.com".

The Respondent submits that he does not have the intention of selling, renting, or transferring the disputed domain name. The Respondent submits that he intends to use the disputed domain name for his own purposes, especially since the disputed domain name is the Respondent's only domain name in Chinese. The Respondent submits that he has already sent an e-mail to the Complainant's authorized representative at the e-mail address of "rosita.li@jsm.com", the person who purported to have the authority to act on his behalf at the e-mail addresses of "5y@sina.com" and "on888@yahoo.com" and to ADNDRC at the e-mail address of "hkiac@adndrc.org".

The Respondent submits that the disputed domain name was first registered on 10 November 2000. However, as the original registrant forgot to renew its registration upon expiry, its rights in the disputed domain name lapsed. Subsequently, the disputed domain name was re-registered on 29 September 2003. The Respondent contends that it is possible that the alleged offer to sell the disputed domain name to the Complainant was made by someone who failed to register the disputed domain name, and that this person was seeking revenge by sending out malicious e-mails. The Respondent submits that, the phrase "太古" is popular, and, has led to great interest amongst individuals and companies in registering the disputed domain name. The Respondent submits that a search on "www.google.com" will easily locate the previous case of John Swire & Sons Limited v Lily Zhu (WIPO Case No. D2001-1025), as well as the Complainant's authorized representative's name, Rosita Y.M. Li. A search for the name "Rosita Y.M. Li" on "www.google.com" will reveal her e-mail address and other contact details. The Respondent contends that the ease of finding Rosita Y.M. Li's e-mail address means that it is not difficult for anyone to write to Rosita Y.M. Li, to discuss matters relating to the disputed domain name. The Respondent submits that he does not know and would not know of the contents of any correspondence between Rosita Y.M. Li and any third parties prior to his receiving notice of this Complaint.

The Respondent argues that, since the disputed domain name is not being used in Hong Kong and is not being used for commercial gain, and is not "太古集团.com" or "太古公司.com", the Respondent's use of the disputed domain name would not affect the Complainant's business.

Findings

Identical / Confusingly Similar

Paragraph 4(a) of the Policy sets out the criteria upon which the findings of the Panel shall be based.
Identical/Confusingly Similar

Issues:1. Does John Swire & Sons Limited have rights in the "太古" trademark?2. Is the disputed domain name, owned by the Respondent, identical or confusingly similar to the "太古" trademark?

Paragraph 4(a)(i) of the Policy provides that the Complainant must show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

In the earlier case of *John Swire & Sons Limited v Lily Zhu* (WIPO Case No. D2001-1025), the Complainant successfully established that the domain name “太古.com” was identical or confusingly similar to the trademark in which the Complainant had rights. Since the Complainant in this case is the same party as in that earlier case, and their trademark rights in “太古” have not lapsed, the Panel is satisfied that the relevant Internet-using public would associate the “太古” mark exclusively with the Complainant.

The Panel notes that the Complainant has adduced extensive evidence to show that it has rights in the “太古” trademark. The Panel observes that the Complainant has registered the “太古” trademark in seven jurisdictions, and evidence of the registration certificates has been provided in Annex B to the Complaint. The Panel notes that a total of 28 domain names, including 太古.net, have been registered by John Swire & Sons (HK) Limited, and a list of these domain names have been provided in Annex C to the Complaint. Finally, the Swire Group dates its history back to 1816, and currently employs over 120,000 employees worldwide. The Panel also notes that the Swire Group of companies is particularly active in the Asia Pacific region, and that the Complainant has adduced evidence of this in Annex D of the Complaint, which exhibits copies of fact sheets setting out the information and businesses of the Complainant and the Complainant’s group. Accordingly, the Panel is satisfied that the Complainant has rights in the “太古” trademark.

The Complainant contends that the disputed domain name has incorporated the Complainant’s mark in its entirety.

The Panel notes that the only difference between the Complainant’s mark and the disputed domain name is the additional “.com” in the disputed domain name. However, the Panel is of the view that “.com” only refers to a business-related domain name, and the additional “.com” in the disputed domain name cannot function to distinguish the disputed domain name from the Complainant’s Mark. This follows from the ADNDRC Decision of www.hktdc.com (DE-0200002).

Accordingly, the Panel concludes that the disputed domain name is identical to the Complainant’s mark.

Rights and Legitimate Interests

Rights and Legitimate Interests

Issues: 1. Does the Respondent have any rights or legitimate interests in respect of the disputed domain name? 2. Has the Respondent adduced sufficient evidence to show that he has rights or legitimate interests in respect of the disputed domain name? 3. How substantial must a right or interest be in order to satisfy paragraph 4(a)(ii) of the policy?

Paragraph 4(a)(ii) provides that the Complainant must show that the Respondent does not have rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) provides that the Respondent can demonstrate his rights to, and legitimate interests in, the disputed domain name:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

- (i) before any notice to you 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate non-commercial 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.”

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name because the Respondent’s name is different from the disputed domain name and the Respondent is not commonly known by the disputed domain name.

The Respondent relies on paragraphs 4(c)(i), 4(c)(ii) and 4(c)(iii) to assert that he has rights and legitimate interests in the disputed domain name.

The Panel notes that the Respondent who was identified in the Complaint was a person called “Qiu Shengjie” (as determined from the WHOIS search of 14 October 2003). However, the registrant was subsequently changed to a person called “Chen Qingrui” (as determined from the WHOIS search of 13 January 2004). Further, on the day the Complaint was filed, the registrant of the disputed domain name was again changed to a person called “Chiu Tien Fu”, who is the current Respondent, and who submitted the Response. Therefore, at the time the Complaint was submitted, the Complainant was not in fact addressing the current Respondent. Nevertheless, it is submitted that this should not affect

the Complainant's assertion as the Respondent's name is different from the disputed domain name and the Respondent is not commonly known by the disputed domain name.

The Respondent relies on paragraph 4(c)(i) of the Policy which allows the Respondent to assert his rights or legitimate interests in the disputed domain name if the Respondent can show that before any notice to him of the dispute, the Respondent has been using, or has made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name, in connection with a bona fide offering of goods or services. The Respondent submits that that he has been using the disputed domain name in connection with a bona fide offering of goods and services since the day he registered the disputed domain name, and before the Complaint was filed.

The Panel is not satisfied that, the Respondent has shown that, before he was notified of the Complaint, the Respondent had been using the disputed domain name in connection with a bona fide offering of goods or services. The Panel notes that the Complainant filed the Complaint on 23 February 2004, on the same day the Respondent registered the disputed domain name. The Respondent was notified of the Complaint on 28 February 2004. Accordingly, when the Respondent was notified of the Complaint, only 5 days had elapsed since the Respondent registered the disputed domain name. The Panel is of the view that the 5-day period between which the Respondent became the registrant and the day he was notified of the Complaint, is too short a period for the Respondent to prove that he had been using the disputed domain name in connection with a bona fide offering of goods and services. Further, the Panel notes that “太古.com” is currently inactive, and that the Respondent has not adduced any evidence to support his contention that the disputed domain name was in use or that he was preparing to use the disputed domain name in connection with a bona fide offering of goods or services.

Accordingly, the Panel concludes that the Respondent cannot rely on paragraph 4(c)(i) of the Policy to assert his rights and legitimate interests in the disputed domain name.

The Respondent relies on Article 4(c)(ii) of the Policy which allows the Respondent to assert his rights or legitimate interests in the disputed domain name if the Respondent can show that he has been commonly known by the disputed domain name, even if the Respondent has not acquired any trademark or service mark rights. The Respondent submits that the disputed domain name is well known.

The Panel is not satisfied that the Respondent has shown that he himself, as an individual, is well known by the disputed domain name. The Respondent makes a bare assertion that the disputed domain name is well known. The Panel further notes that the Respondent only became the registrant of the disputed domain name on the very same day the Complaint was filed with ADNDRC and that when the Respondent was notified of the Complaint, only 5 days had elapsed since the Respondent became the registrant of the disputed domain name. Accordingly, it is not possible for the Respondent to have become well known by the disputed domain name, or, for the disputed domain name to become well known, within such a short period of time. The Panel concludes that the Respondent has not shown that he has rights or legitimate interests in accordance with paragraph 4(c)(ii) of the Policy.

The Respondent also appears to rely on paragraph 4(c)(iii) to assert his rights or legitimate interests in the disputed domain name. The Respondent submits that he registered the disputed domain name for two reasons.

First, the Respondent previously owned the domain name “eonlove.com”. In connection with this, he registered the disputed domain name to form part of the “Tai Gu Love and Charity Web” or “太古爱心慈善网站”. However, because Chinese characters could not be displayed as a website address at the material time, the Respondent re-directed the disputed domain name to a website called <http://www.humanbliss.com.sg/index.asp>. Various other re-directions were involved until, eventually, the website <http://www.lovesino.com/cat/1.html> would be displayed. The Respondent asserts that the purpose of his website is to promote love, charity and care for the human race.

Second, the Respondent's loved one has a nickname called “太古” and therefore, the Respondent likes the term “太古” immensely.

The Respondent submits that he had no intention of using the disputed domain name for a commercial purpose. As noted above, the website “太古.com” is currently inactive. Accordingly, it is not possible for the Panel to confirm independently if the use of the website prior to the dispute was legitimate and non-commercial. The Panel is of the view that, although the Respondent has annexed e-mails from “taigu5@hotmail.com” and “huanganle@post.com” to prove that the disputed domain name was operational within a week of being registered and is being used primarily to promote love, charity and care for the human race, such e-mails are not good evidence, particularly since these e-mails are not from independent sources, and were sent only after the Complaint was filed.

The Panel is of the view that the reasons given by the Respondent as to why he registered the disputed domain name to be far-fetched and insubstantial. The Respondent's second reason for registering the disputed domain name is that his loved one is nicknamed “太古”. The Panel is of the view that such a reason is not a legitimate reason for registering the disputed domain name, and is probably an irrelevant reason. Accordingly, the Panel finds that the Respondent cannot rely on Paragraph 4(c)(iii) of the Policy to assert his rights and legitimate interests in the disputed domain name.

For the above reasons, the Panel concludes that the Respondent does not have any rights or legitimate interests in the disputed domain name.

Bad Faith

Bad Faith

Issues: 1. Was the disputed domain name registered and used in bad faith?

Paragraph 4(a)(iii) of the Policy provides that the Complainant must show that the Respondent registered and used the disputed domain name in bad faith.

Paragraph 4(b) of the Policy specifies four circumstances, in particular but without limitation, which shall be evidence of the registration and use of the disputed domain name in bad faith:

- (i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have 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 you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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.

The Complainant alleges that the Respondent registered and used the disputed domain name in bad faith. The Complainant relies on paragraphs 4(b)(i) and 4(b)(ii) of the Policy to prove that the Respondent registered and used the disputed domain name in bad faith.

First, the Complainant alleges that the Respondent registered the disputed domain name for the sole purpose of selling, renting or otherwise transferring the disputed domain name registration for profits. The Complainant submitted those facts relating to the alleged offer to sell the disputed domain name set out under the Complainant's contentions. In support of its contentions, the Complainant adduces a series of e-mails evidencing the correspondence between the Complainant and the authorised representative of the Respondent, Henry.

Second, the Complainant submits that the Respondent deliberately registered the disputed domain name in order to prevent the Complainant from reflecting its marks and services in a corresponding domain name.

The Respondent submits that the e-mail correspondence between the Complainant and Henry were unauthorized offers. He denies having any association with Henry or any other third party in relation to domain name matters. The Respondent asserts that he did not have the intention of selling, renting or transferring the disputed domain name.

Having reviewed the relevant correspondence between the Complainant and Henry, the Panel is satisfied that Henry was indeed the authorised representative of the Respondent. The Panel finds the e-mail dated 20 February 2004 from the Complainant's authorised representative to the Respondent, inquiring whether Henry was authorised to act on the Respondent's behalf, especially telling. The Panel concludes that, since the Respondent failed to respond to this particular e-mail, and has not denied that Henry was his authorised representative in the sale of the disputed domain name, Henry was indeed the authorised representative of the Respondent. The Panel is also ready to infer that Henry was in fact the Respondent's authorised representative from the fact that the reply to the e-mail dated 20 February 2004 was from Henry himself.

From the chain of correspondence between the authorised representative of Complainant and the authorised representative of the Respondent, which indicates strongly that the authorised representative of the Respondent Henry was trying to sell the disputed domain name to the Complainant, the Panel is satisfied that the Respondent had registered the disputed domain name primarily for the purpose of selling or transferring the disputed domain name registration to the Complainant, who is the owner of the “太古” trademark, for valuable consideration in excess of his documented out-of-pocket costs directly related to the domain name. Having regard to the ADNDRC Decisions of www.hktdc.com (DE-0200002) and www.raineandhornecommercial.com (DE-0200006), the Panel is of the view that the offer price of US\$100,000 for the disputed domain name is clear evidence that the Respondent registered and used the disputed domain name in bad faith.

The Panel is also persuaded by authorities which have interpreted the terminology used in paragraph 4(a)(iii) and 4(b) of the Policy widely. In particular, there are authorities which have found that “being used in bad faith” includes inactivity or doing nothing with the disputed domain name. For instance, in the WIPO Decision of Telstra Corporation

Limited v Nuclear Marshmallows (D2000-0003), the Panel found that the passive holding of a domain name amounts to using the domain name in bad faith. In view of the fact that the disputed domain name is currently inactive, and that the Respondent has failed to adduce any evidence of use of the disputed domain name as a website, the Panel considers that such inactivity of the disputed domain name, together with the offer to sell the disputed domain name, amounts to “using” the disputed domain name in bad faith.

Accordingly, the Panel concludes that the Respondent registered and used the disputed domain name in bad faith.

Status

www.太古.com

Domain Name Transfer

Decision

The Panel concludes that

(a) the disputed domain name “太古.com” is identical to the Complainant’s rights and trademark in the Mark “太古”；

(b) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(c) the Respondent registered and used the disputed domain name in bad faith.

Accordingly, pursuant to paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name “太古.com” be transferred to the Complainant, namely, John Swire & Sons Limited.

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