



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

— ADNDRC is a charitable institution limited by guarantee registered in Hong Kong

Decision Submission

[English](#)
[Print](#)

Decision ID	DE-0500045
Case ID	HK-0500058
Disputed Domain Name	www.newchina.net
Case Administrator	Dennis Choi
Submitted By	Gary Biesty
Participated Panelist	Gary Biesty
Date of Decision	03-06-2005

The Parties Information

Claimant	New China Dot Com
Respondent	New China Network, LLC

Procedural History

On 2nd March 2005 the Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“the ADNDRC”).

This was subsequently sent to the Respondent, who submitted a Response within the time required under the Rules (see below).

The Complaint is made in respect of the domain name www.newchina.net (“the Domain Name”). These proceedings have been established to deal with the Complaint, and are governed by:

(a) the Uniform Domain Name Dispute Resolution Policy (“the Policy”), as adopted by the Internet Corporation for Assigned Names and Numbers on 26th August 1999;

(b) the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (“the Rules”); and

(c) the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (“the Supplemental Rules”).

On 12th April 2005, the Case Administrator informed the Parties that Mr. Gary Biesty had been appointed as the sole Panelist in these proceedings. The case file was posted to the Panelist on the same day.

On 14th April 2005 the Complainant submitted a request to amend the Complaint by way of adding further materials to it. The Respondent opposed the granting of this request, which opposition was communicated by an e-mail of the same date.

On 19th April 2005 the Panelist directed that:

(i) provided there was no undue delay to the prejudice of the Respondent, the Complainant should be allowed to amend the Complaint,

(ii) the Respondent should be allowed to amend its Response accordingly, and should do so within seven (7) days of the Provider forwarding the Amended Complaint to the Respondent in accordance with Rule 4(a) – Rule 4 (d).

The Complainant submitted a hard copy of the Amended Complaint to the ADNDRC on 9th May 2005, and a soft copy on 19th May 2005. The Respondent submitted its Amended Response on 24th May 2005. Both Parties have therefore complied with the Panelist's Direction.

The language of these proceedings is English, pursuant to Paragraph 11(a) of the Rules.

Factual Background

For Claimant

According to the Complaint, the Complainant is a Limited Company registered in accordance with the laws of Hong Kong. Its address is given as 2/F, 506 Guo Ding Road, Shanghai 200433, China. The Complainant's business activities relate to the provision of internet portal services.

For Respondent

The Respondent is a Limited Liability Company registered in the state of Michigan in the United States of America. Its address is stated as being P.O. Box 21126, Lansing, MI 48909, USA. According to the Response, the Respondent operates a website directory containing links to websites in China. The Respondent acquired the Domain Name through an online auction hosted on the domain <pool.com>, that had 'snapped' the domain name through domain Registrar, Communal Communication Ltd. on 16th October 2004.

Parties' Contentions

Claimant

The Complainant contends:

- (a) It owned the Domain Name from 2001 until October 2004, and has used the Domain Name in relation to the provision of 'content portal services'. It has invested much time and cost in the brand and image of 'newchina.net'; and
- (b) The Respondent's only purpose in registering the Domain Name was to sell it to the Complainant. The Respondent is not seriously using the Domain Name, as evidenced by the fact that its website is only a collection of links to Chinese websites.

Respondent

The Respondent contends:

- (a) It purchased the website at a relatively high price, and that this is evidence of a legitimate interest in the domain name;
- (b) It registered its company name, 'New China Network, LLC' and developed a website to be hosted on the Domain before it was aware of these proceedings;
- (c) It has been using the Domain Name for 'legitimate noncommercial and fair use';
- (d) There is no requirement within the Policy for a domain to be transferred back to a previous registrant after it has been deleted and registered by another party. The WIPO proceedings referenced in Paragraph 6 of the Response are apparently of relevance;
- (e) The Respondent does not wish to sell the Domain Name, as evidenced by the fact that the Complainant approached the Respondent to purchase the Domain Name and not vice versa;
- (f) The Respondent did make an offer, after corresponding with the Claimant, to sell the Domain Name back to the Complainant for USD1,500. This was, however, merely an attempt to avoid 'litigation', and in any event, USD1,500 only represents a partial recovery of the Respondent's out-of-pocket expenses;

(g) It had no knowledge of the Complainant before being contacted by them with a request to purchase the Domain Name;

Findings

Identical / Confusingly Similar

In order to succeed in these proceedings, pursuant to Paragraph 4 of the Policy the Complainant is required to prove that:

(i) the domain name <newchina.net> is identical or confusingly similar to a trademark or service mark in which the complainant has rights;

(ii) the registered holder of the disputed domain name has no rights or legitimate interests in respect of the domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

The Complainant has failed to establish that the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights. Indeed the Complainant has failed meet the more basic requirement of identifying a trade or service mark in which it is said to have rights.

Whilst some reference has been made to a ‘brand’ and ‘corporate image’, no further assertions are made or substantiation provided.

The Complaint must therefore fail on this first point.

Rights and Legitimate Interests

It is not necessary for me to make any determination in relation to whether the Respondent has any rights or legitimate interest in the Domain Name, as the Complaint fails upon the ground identified above. For the avoidance of doubt, however, it is my view that the Complainant has also failed to satisfy this issue, as it is required to do under the Policy. In the absence of any evidence or particulars from the Complainant, I am unable to find that the Respondent’s use of the Domain Name is not legitimate, or that it does not have any right in respect of it.

The Complaint must therefore fail on this second point.

Bad Faith

Again, it is not necessary for me to make any determination in relation to whether the Domain Name has been registered and is being used in bad faith. However, for the avoidance of doubt it is my view that the Complainant has again failed to meet this requirement of the Policy.

It should be noted, however, that some suggestion of bad faith might appear to exist in these proceedings, although it has not been identified or referred to by the Complainant. At the numbered paragraph (2) of its Response, the Respondent asserts:

“Our company name “New China Network, LLC”, a Limited Liability Company registered in the state of Michigan in the United States (see Appendix 3), contains the exact words in the domain name “NewChina.net”. Furthermore, our company was registered even before we received the domain dispute notice from ADNDRC. It is verifiable from the database on Michigan Government website: “http://www.dleg.state.mi.us/bcs_corp/sr_corp.asp”.

Whilst true in a strict sense, this statement is somewhat misleading. The company’s true name is “University Job Bank, LLC”. On 3rd January 2005, the company registered an assumed name ‘New China Network, LLC’. Further investigation reveals the company has also registered the assumed names; Biz China Network, LLC, Pays.Com, LLC, and PostDocJobs.com. This could be taken to suggest that a pattern of conduct exists, although without more, remains speculation only. The Complainant has not mentioned this in its complaint, nor does it provide any evidence to support an allegation of bad faith. Overall, the Complainant has provided very little information by way of submission or evidence, and again the Complaint must fail on this third point.

Status

www.newchina.net

Complaint Rejected

Decision

The Complainant has failed to satisfy any of the requirements contained within Paragraph 4(a) of the Policy. The Complaint is dismissed accordingly.

[Back](#) [Print](#)