



## ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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### Decision Submission

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|                       |               |
|-----------------------|---------------|
| Version               |               |
| Decision ID           | DE-0800162    |
| Case ID               | HK-0800179    |
| Disputed Domain Name  | www.长江基建.com  |
| Case Administrator    | Dennis CAI    |
| Submitted By          | David Kreider |
| Participated Panelist |               |

Date of Decision 29-10-2008

Language Version : English

#### The Parties Information

|                   |   |
|-------------------|---|
| <b>Claimant</b>   | Cheung Kong Infrastructure Holdings Limited |
| <b>Respondent</b> | ng River (Ji Jian) Trading                  |

#### Procedural History

The Complainant is Cheung Kong Infrastructure Holdings Limited, of 12th Floor, Cheung Kong Center, 2 Queen' s Road Central, Hong Kong.

The Respondent is ng River (Ji Jian) Trading, of Bayview Avenue BVI 1000 VG.

The domain name at issue is 长江基建.com, registered by Respondent with Spot Domain LLC DBA Domainsite.com, of 125 Rampart Way, Suite 300, Denver, CO 80230.

On 31 July 2008, the Complainant submitted a Complaint in the English language to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC) and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules). On 15 August 2008, the ADNDRC sent to the complainant by email an acknowledgement of the receipt of the complaint and reviewed the format of the complaint for compliance with the Policy, the Rules and the ADNDRC Supplemental Rules. All correspondence to and from the HKIAC described herein was in the English language.

On 16 August 2008, the ADNDRC transmitted by email to the Registrar, Spot Domain LLC DBA Domainsite.com, a request for registrar verification in connection with the disputed domain name. On 11 September 2008, the Registrar transmitted by email to the ADNDRC its verification response, confirming that the Respondent is listed as the registrant and providing the contact details. On 18 September 2008, the ANDRC requested the domain holder' s contact particulars from the Registrar by email, which the Registrar supplied on 19 September 2008.

On 19 September 2008, the ADNDRC transmitted the Complaint to the Respondent and notified the Respondent of the commencement of the action by email. The Respondent failed to submit a Response within the specified period of time. Accordingly, on 10 October 2008, the ADNDRC notified the Respondent' s default.

Since the Respondent defaulted and did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC informed the Complainant and Respondent that the ADNDRC would appoint a one-person panel to proceed to render the decision.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the ADNDRC notified the parties that the Panel in this case had been selected, with Mr. David KREIDER acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

On 10 October 2008, the Panel received the file from the ADNDRC and should render the Decision within 14 days, i.e., on or before 27 October 2008.

Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, 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. The language of the current disputed domain name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

## Factual Background

### For Claimant

The Complainant in this case is Cheung Kong Infrastructure Holdings Limited, a corporation registered in Hong Kong. The Complainant is the owner of several trademarks including “长江基建集团有限公司”, “长江基建集团” and “长江基建”.

### For Respondent

The Respondent, ng River (Ji Jian) Trading, is the current registrant of the disputed domain name <长江基建.com> according to the Whois information. The registered address of the Respondent is Bayview Avenue BVI 1000 VG, and the telephone number is +1.2349001.

## Parties' Contentions

### Claimant

#### A. Complainant

The Complainant's contentions may be summarized as follows:

I. The Disputed Domain Name is identical or confusingly similar to a trade mark or service mark to which the Complainant has rights

(a) The Complainant is a limited company incorporated in Bermuda in 1996. On 24 June 1996, the Complainant was registered with the Companies Registry of Hong Kong as an overseas. The Complainant, together with Cheung Kong (Holdings) Limited, Hutchison Whampoa Limited and Hongkong Electric Holdings Limited, which are constituent stocks of the Hang Seng Index; Hutchison Telecommunications International Limited, Hutchison Harbour Ring Limited and TOM Group Limited, which are companies listed on the Main Board of the Hong Kong Stock Exchange; and CK Life Sciences Int'l, (Holdings) Inc., a company listed on the Growth Enterprise, are the major members of the Cheung Kong Group.

(b) In 1996, Cheung Kong (Holdings) Limited and Hutchison Whampoa Limited decided to re-organize their infrastructure and related businesses in China, Hong Kong and other Asian countries. As a result, the Complainant was incorporated for the purpose of taking over the infrastructure and related business from both Cheung Kong (Holdings) Limited, Hutchison Whampoa Limited. As the Complainant is a member of the Cheung Kong Group and focuses on infrastructure and related business, the Complainant adopted “长江基建集团有限公司” as its Chinese company name from 24 June 1996. The Complainant has continuously used “长江基建集团有限公司”, “长江基建集团” and “长江基建” as its service marks/trade names since then.

(c) Shares of the Complainant were listed on the Stock Exchange of Hong Kong in July 1996 and the Complainant is now the largest publicly listed infrastructure company in Hong Kong with diversified investments in Energy Infrastructure, Transportation Infrastructure and Infrastructure Related Business. Operating in Hong Kong, China, Australia, the United Kingdom, Canada and the Philippines, the Complainant is a leading player in the global infrastructure arena. As of December 31, 2007, the Complainant's market capitalisation was approximately HK\$65 billion.

(d) Since its incorporation in 1996, major projects/investments of the Complainant in China, Hong Kong and overseas countries over the years include the following:-

1996

- together with Hopewell Holdings Limited, the Complainant signed a supplementary agreement with Guangzhou Freeway Company regarding the construction, management and operation of the East-South section of the East-South-West Ring Road in Guangzhou
- financing for Zhuhai Power Station

1997

- to invest RMB 650 in Fushun power and water plants
- signed two contracts with Guangdong International Trust and Investment Corporation to further expand its portfolio of cement and concrete businesses in China
- invested RMB 663 in Hebei roads
- signed contracts to invest in Zhumadian Sections of National Highway 107
- brought its investments in China to over HK\$10 billion with the signing of a batch of power contracts in the north-eastern province of Jilin
- signed contracts to invest in the Wujialing and the Wuyilu bridges at Changsha city in Hunan Province
- received licensing approval from Hong Kong's Environmental Protection Department to utilise an environmentally friendly method to fuel its cement kilns

1998

- formed a consortium to bid for the franchise operation of 88 bus routes in Hong Kong
- signed RMB 150 million contracts for Yueyang

1999

- acquiring interest in Eastern Harbour Crossing Rail Tunnel
- entered into a subscription agreement to purchase a 19.97% interest in Envestra Limited, the largest natural gas distribution company in Australia

2000

- planned to invest in a RMB 1.2 billion infrastructure development plan in association with the city of Panyu in Guangdong Province
- formed a joint venture with Hong Kong Electric Holdings Limited and successfully acquired Powercor Australia, an Australian company engaged in electricity
- invested Canadian Dollars \$16.3 million (approximately HK\$86 million) and acquired an 18% stake in Canadian hydrogen fuelling company, Stuart Energy Systems Corporation

2001

- reached a preliminary agreement with the Government of the State of South Australia regarding the Complainant's investment of Australia Dollars \$26.5 million in an Australian rail project which connects Darwin in the north and Alice Springs in central Australia

2002

- the Complainant's led consortium was awarded Cross City Tunnel project in Sydney by the New South Wales
- won tender to become Melbourne Electricity Supplier

2003

- jointly host a symposium with Hong Kong Polytechnic University on Hydrogen Infrastructure Technology for Energy and Fuel Applications

2004

- acquired 100% of Cambridge Water in South Cambridgeshire, UK
- merger of its concrete and quarry operations in Hong Kong between its subsidiary, Anderson Asia (Holdings) Limited and the Hong Kong arm of Hanson PLC, one of the leading building materials suppliers across the globe

2005

- signed RMB 6 Billion contract for Zhuhai Power Plant Extension

News and information of the above projects/investments have always been made available on the Complainant's official website for public viewing. The service marks/trade names including “长江基建集团有限公司” and “长江基建” have always been used by the Complainant.

(e) The Complainant claims rights in the service marks/names “长江基建集团有限公司”, “长江基建集团” and “长江基建”. As a result of the extensive and long period of use of the said service marks/names, such service marks/names have been well-recognised by the public to be distinctive of and identified with the Complainant but none other. Substantial goodwill and

reputation has subsisted in the service marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建”。 One can also find countless publications and reports on the internet about the Complainant by reference to the service marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建”。 As such, the Complainant undoubtedly has rights in the service marks/trade names by reference to the service marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建”。

(f) The major part of the Disputed Domain Name is identical to the service marks/trade names of the Complainant.

II. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name

(a) The Respondent is not in any way related to the Complainant, nor was the Respondent authorized by the Complainant to use the mark/name by reference to the service marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建”。

(b) On or before the registration date of the Disputed Domain Name, i.e. 21 April 2006:-

i. The Complainant has been trading under the name “长江基建集团有限公”；

ii. The Complainant has been widely using the service marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建” in the course of its business activities；

iii. substantial goodwill and reputation subsisted in the service marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建”；and

iv. The service marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建” have been identified by the public as the service marks/trade names of the Complainant and none other.

(c) As such, the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

III. The Disputed Domain Name has been registered and is being used in bad faith

(a) The Complainant has been established in Hong Kong and is continuously using the services marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建” for almost 10 years before the date of registration of the Disputed Domain Name. Substantial reputation and goodwill has already subsisted in the Complainant’s service marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建”，particularly in Hong Kong and China. Undoubtedly, the Complainant has prior rights in the service marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建”。 As such, it could not be a coincidence for the Respondent to register a domain name which is identical to the Complainant’s service marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建”，taking into account that the Respondent has never had any rights or legitimate interests in the said marks/names. It is believed that the Respondent registered the Disputed Domain Name in order to confuse the public that the Respondent’s act is authorized by the Complainant. It is clear that the Respondent had acted in bad faith when it made the application for registration of the Disputed Domain Name in 2006.

(b) Further, the Complainant noted that the Disputed Domain Name is linked to a webpage providing information search services. This indicates that the registration of the Disputed Domain Name has no purpose other than to create confusion that such registration is endorsed by the Complainant and thereby attracting Internet users to visit the Respondent’s website thinking that it is related to the Complainant.

### Respondent

The Respondent failed to submit a Response to the Complaint within the specified time period.

### Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.” Paragraph 4 (a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- i. the domain name registered by the Respondent must be identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. the Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. the domain name has been registered and is being used in bad faith.

### Identical / Confusingly Similar

The evidence submitted by the Complainant shows that the Complainant owns the trademarks “长江基建”。 As the suffix “.com” only indicates that the domain name is registered under this gTLD and is not distinctive, the Panel has no problem in

finding that the disputed domain name <长江基建.com> is identical with the Complainant's trademark “长江基建”. The major part of the Disputed Domain Name, “长江基建”, is identical to the Complainant's service marks/trade names. The Panel therefore holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy.

### **Rights and Legitimate Interests**

The Complainant contends that the Respondent does not have rights to or legitimate interests in the disputed domain name. The Complainant's assertion is sufficient to establish a prima facie case under Policy 4 (a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests. The Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the disputed domain name.

The Panel therefore finds that the Complaint fulfills the conditions provided in Paragraph 4(a)(ii) of the Policy.

### **Bad Faith**

The Complainant has been established in Hong Kong and is continuously using the services marks/trade names “长江基建集团有限公司”, “长江基建集团” and “长江基建” for almost 10 years before the date of registration of the Disputed Domain Name. Substantial reputation and goodwill subsists in the Complainant's service marks/trade names “长江基建集团有限公司”, “长江基建集团” and “长江基建”, particularly in Hong Kong and China, where the names “Cheung Kong Infrastructure Holdings Ltd.”, in English, and “长江基建集团有限公司”, in Chinese, are virtually “household names”. That the Complainant has prior rights in the service marks/trade names “长江基建集团有限公司”, “长江基建集团” and “长江基建” is beyond serious question. As such, it could not be a coincidence, and the Panel has no difficulty whatsoever in finding that it was not mere coincidence, that the Respondent registered a domain name which is identical to the Complainant's service marks/trade names “长江基建集团有限公司”, “长江基建集团” and “长江基建”, taking into account that the Respondent has never had any rights or legitimate interests in the said marks/names. The Panel finds that the Respondent registered the Disputed Domain Name in order to confuse the public that the Respondent's use thereof was authorized by the Complainant, when it was not. It is clear that the Respondent had acted in bad faith when it made the application for registration of the Disputed Domain Name in 2006.

Further, the Disputed Domain Name is linked to a webpage providing information search services, as well as a disparate grab bag of commercial merchandise, including “housewarming gifts”, “sundials”, “garden ornaments” and “cheap hard drives”, computer components and accessories. This indicates that the registration of the Disputed Domain Name has no purpose other than to create confusion that such registration is endorsed by the Complainant and thereby attracting Internet users to visit the Respondent's website thinking that it is related to the Complainant, for commercial gain.

In conclusion, the Panel finds that the Respondent has registered and used the domain name in bad faith. Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4 (a) (iii) of the Policy.

### **Status**

www.长江基建.com                      Domain Name Transfer

### **Decision**

Having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the <长江基建.com> domain name should be TRANSFERRED from the Respondent to the Complainant.

David KREIDER  
Sole Panelist

Dated: 22 October 2008