



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

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Version
 Decision ID DE-0900199
 Case ID HK-0800181
 Disputed Domain Name www.李嘉诚基金会.com
 Case Administrator Dennis CAI
 Submitted By David Kreider
 Participated Panelist

Date of Decision 25-02-2009

Language Version : English

The Parties Information

Claimant Li Ka Shing Foundation Limited
Respondent changzhoushi wujinqu hutang xinchuan jingmi moju chang

Procedural History

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 16 August 2008, the ADNDRC sent to the Complainant by email an acknowledgement of its 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, Web Commerce Communications Limited DBA, a request for registrar verification in connection with the Disputed Domain Name. On 18 August 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 25 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 23 October 2008, the ADNDRC notified the Respondent's default.

Thereafter, on 15 December 2008, the Complainant submitted its Supplemental Complaint to the ADNDRC by email.

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, on 11 February 2009, the ADNDRC notified the parties by email that the panel in this case had been selected, with Mr. David KREIDER ("Panel"), acting as the sole panelist. The Panel determines that the appointment was made in accordance with the Rules and the ADNDRC's Supplemental Rules.

Also on 11 February 2009, the Panel received the file from the ADNDRC and should render the Decision within 14 days, i.e., on or before 4 March 2009.

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 is the Li Ka Shing Foundation Limited The Complainant, Li Ka Shing Foundation Limited (李嘉诚基金会有限公司), is a charitable foundation established on 6 August 1980 by Mr. Li Ka Shing. The Complainant claims rights in the service mark/name "李嘉诚基金会".

For Respondent

The Respondent, changzhoushi wujinqu hutang xinchuan jingmi moju chang, is the current registrant of the Disputed Domain Name <李嘉诚基金会.com>, according to the Whois information; the registered address of the Respondent is yujia gongyeyuan, hutang, changzhou, China; and the email address is xcmjwb@vip.sina.com.

Parties' Contentions

Claimant

The Complainant's contentions may be summarized as follows:

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, Li Ka Shing Foundation Limited (李嘉诚基金会有限公司), is a charitable foundation established on 6 August 1980 by Mr. Li Ka Shing, the tycoon who ranks 11th on Forbes Billionaires List 2008. Mr. Li Ka-shing is also the Chairman of Cheung Kong (Holdings) Limited Cheung Kong (Holdings) Limited which is the flagship of the Cheung Kong Group, the leading Hong Kong based multi-national conglomerate. In Hong Kong alone, members of the Cheung Kong Group include Cheung Kong (Holdings) Limited (stock code: 0001), Hutchison Whampoa Limited (stock code: 0013) and Hongkong Electric Holdings Limited (stock code: 0006), which are constituent stocks of the Hang Seng Index; Cheung Kong Infrastructure Holdings Limited (stock code: 1038), Hutchison Telecommunications International Limited (stock code: 2332), Hutchison Harbour Ring Limited (stock code: 0715) and TOM Group Limited (stock code: 2383), which are companies listed on the Main Board of the Hong Kong Stock Exchange; and CK Life Sciences Int'l., (Holdings) Inc. (stock code: 8222), a company listed on the Growth Enterprise Market. The combined market capitalisation of the Cheung Kong Group's Hong Kong listed companies amounted to HK\$817 billion as at 30 June, 2008. The Cheung Kong Group operates in 57 countries and employs about 260,000 staff worldwide.

(b) Mr. Li considers education and medical care to be the twin pillars of national welfare. At the same time, he also realizes that his contribution as an individual can only be limited. To achieve the greatest good, Mr. Li would first have to build a successful career. As his business blossomed, Mr. Li began to make strategic contributions to education and medical care projects in Hong Kong and China. In 1980, Mr. Li set up the Complainant with a mission to enhance the impact of his philanthropy through two strategic objectives: to nurture a culture of giving and to foster creativity, constructive engagement, and sustainability through supporting capacity empowerment focused projects. To date, the Complainant and other private charitable Foundations established by Mr. Li have supported numerous charitable activities with grants, sponsorships and commitments of nearly HK\$10 billion.

(c) Major donation projects undertaken by the Complainant include but are not limited to the following:-

(i) Education

China

- established Shantou University
- established Cheung Kong Graduate School of Business
- launch education and medical development programmes in Western China
- implemented Cheung Kong Scholars Programme
- donated US\$10 million towards the establishment of a Future Internet Technology Research Centre at Tsinghua University
- from 1994 to 1999, made contributions to help build and repair 70 primary schools in the poor rural areas of Chaozhou

Hong Kong

- donation to the University of Hong Kong
- donated HK\$100 million to Polytechnic University to promote the further development of continuing education opportunities for working adults to upgrade their professional skills
- donation toward the purchase of a 3,100 metre venue as the Open University's learning centre on Hong Kong Island which is the largest personal donation ever received by the University

1. Medical

China

- donated HK\$2 million (more than a quarter million U.S. dollars) in 1984 to the China Disabled Persons' Federation (CDPF) and another HK\$105 million (US\$13.4 million) in 1991 to help provide rehabilitation services for the 163,000 disabled persons
- established the "Heart of Gold" Hospice Service Program
- supported the construction of the Zhongren Nursing Home

- donation made to the Chaozhou Central Hospital

Hong Kong

- helped finance five homes for the elderly in Hong Kong
- funded the Li Ka Shing Specialist Clinics at the Prince of Wales Hospital
- donated the Li Ka Shing Physiotherapy Building at the Duchess of Kent Children's Hospital

2. Culture

China

- made a number of donations and coordinated many projects for the preservation of historical monuments and cultural relics
- supporter of The National Ballet of China from 1994 to 2002

Hong Kong

- made a number of donations and coordinated many projects for the preservation of historical monuments and cultural relics
- donation to the Hong Kong Philharmonic Orchestra

(iv) Community Welfare

China and Hong Kong

- used a "Just in Time Fund" to offer timely and direct relief in natural catastrophes, special and emergency situations, and work-related injuries and deaths of civil servants, in the hope of encouraging further support from private and public
- supported Changing Young Lives Foundation's work with disadvantaged children in China and Hong Kong and Mainland China through long-term, sustainable projects

(d) Apart from China and Hong Kong, the Complainant has also undertaken charitable projects in other overseas countries including but not limited to U.S.A., Canada, Singapore, United Kingdom, Australia, the Netherlands, France, Malaysia, Sri Lanka, India, Indonesia, Thailand, Pakistan and Sweden.

(e) Since 1980, the Complainant has been using "李嘉诚基金会" extensively as a service mark/trade name for those activities mentioned in paragraph (c) above. The Complainant is the registered proprietor of, inter alia, the following service marks in Hong Kong and China:-

Hong Kong

Registration No.	Date of Registration	Class
300150533	4 April 2003	36
300150542	4 April 2003	41
300168039	4 April 2003	42, 43, 44

China

Registration No.	Date of Registration	Class
1547916	28 March 2001	36
1511808	21 January 2001	41
1583975	7 June 2001	42

(f) The Complainant claims rights in the service mark/name "李嘉诚基金会". As a result of the extensive and long period of use of the service mark/name "李嘉诚基金会" by the Complainant, such service mark/name has 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 mark/trade name "李嘉诚基金会". One can also find countless publications and reports on the internet about the Complainant by reference to the service mark/trade name "李嘉诚基金会".

(g) The major part of the Disputed Domain Name is identical to the service mark/trade name of the Complainant.

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

(h) The Respondent is not in any way related to the Complainant, nor was the Respondent authorized by the Complainant to use the mark/name "李嘉诚基金会".

(i) On or before the registration date of the Disputed Domain Name, i.e. 23 June 2006:-

- i. The Complainant was established with a name incorporating the service mark/name "李嘉诚基金会";
- ii. (ii) The Complainant has already registered the service mark "李嘉诚基金会" in Hong Kong and China;
- iii. (iii) The Complainant has widely used "李嘉诚基金会" as its service mark/trade name;
- iv. Substantial goodwill and reputation subsisted in the service mark/trade name "李嘉诚基金会"; and

v. The service mark/trade name “李嘉诚基金会” has been identified by the public as the service mark/trade name of the Complainant and none other.

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

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

(k) The Complainant has been established in Hong Kong for more than 20 years before the date of registration of the Disputed Domain Name and the Complainant has been using the service mark/trade name “李嘉诚基金会” ever since. Substantial reputation and goodwill has already subsisted in the Complainant’s service mark/trade name “李嘉诚基金会” in Hong Kong and China. Undoubtedly, the Complainant has prior rights in the service mark/trade name “李嘉诚基金会”. As such, it could not be a coincidence for the Respondent to register a domain name which is exactly identical to the Complainant’s service mark/trade name “李嘉诚基金会”, taking into account that the Respondent has never had any rights or legitimate interests in the said mark/name. 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.

(l) The Complainant also noted that apart from the Disputed Domain Name, the Respondent has also registered the domain name “李嘉诚基金会.cn”. It is evident that the Respondent has a pattern of registering domain names which are identical to the service mark/trade name of the Complainant.

(m) Further, the Complainant noted that the Disputed Domain Name was not put into use by the Respondent. 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.

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:

- vi. the domain Names registered by the Respondent must be identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- vii. the Respondent has no rights or legitimate interests in respect of the domain Names; and
- viii. the domain Names have been registered and are being used in bad faith.

Identical / Confusingly Similar

The Supplemental Complaint, although submitted by Complainant after the date of the Respondent’s default, is nonetheless brief and helpful, and has been received and considered by this Panel.

The domain name in dispute is <李嘉诚基金会.com>. Apart from the gTLD suffix “.com”, which has no relevant distinguishing function, the domain name registered by the Respondent is “李嘉诚基金会”.

The Supplemental Complaint raises no new facts that were not already disclosed in the initial Complaint, but does offer the following point of clarification:

As evidenced by the Whois data ... the name of the Respondent is not “李嘉诚基金会” and the Respondent is not commonly known as “李嘉诚基金会” which is the major portion of the Disputed Domain Name.

Because the name of the Respondent evidenced by the Whois data appears in “pin yin” or Romanised Chinese, and is far longer than would be a transliteration of the two or three Chinese characters customarily comprising a Chinese personal name, the Supplemental Complaint helpfully clarifies a point that could otherwise give rise to possible confusion or error.

That is, the Disputed Domain Name would be transliterated, in the Mandarin Dialect of spoken Chinese, as “li jia cheng ji jin hui”, whereas the transliterated name of the Respondent as evidenced by the Whois data is “changzhoushi wujinqu hutang xinchuan jingmi moju chang”.

As is correctly recited in the Supplemental Complaint, the name of the Respondent is not similar or identical to the Disputed Domain Name, or any portion thereof, and bears no relation or resemblance whatsoever to the Disputed Domain Name. Rather, it appears to this Panel that the registered name of the Respondent as reflected by the Whois data, is not the name of an individual, but is perhaps

an address in China and the name of a person inartfully joined together. It is, of course, not necessary to pursue this tangential point to a conclusion in order to decide the instant dispute.

Of far more significance in determining this dispute, the Panel finds that the first three Chinese characters comprising the Disputed Domain Name “李嘉诚” are immediately recognisable to Chinese speakers in Hong Kong and Greater China (and, indeed, the world over), as the Chinese characters comprising the name “Li Ka Shing”. Mr. Li is a Hong Kong business tycoon of undisputed iconic stature.

The remaining three Chinese characters comprising the Disputed Domain Name “基金会”, mean simply “foundation”. They would typically be used, as they are here, to refer to a charitable foundation.

As a result of the extensive and long period of use of the service mark/name “李嘉诚基金会” by the Complainant, such service mark/name is 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 mark/trade name “李嘉诚基金会”.

From the evidence adduced, the Panel finds that, The Complainant enjoys rights in and to the service mark/name “李嘉诚基金会”.

The Panel therefore holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy.

Rights and Legitimate Interests

The Complaint and annexed exhibits establish that, on or before the registration date of the Disputed Domain Name, i.e. 23 June 2006:-

- i. The Complainant was established with a name incorporating the service mark/name “李嘉诚基金会”;
- ii. The Complainant has already registered the service mark “李嘉诚基金会” in Hong Kong and China;
- iii. The Complainant has widely used “李嘉诚基金会” as its service mark/trade name;
- iv. Substantial goodwill and reputation subsisted in the service mark/trade name “李嘉诚基金会”; and
- v. The service mark/trade name “李嘉诚基金会” has been identified by the public as the service mark/trade name of the Complainant and none other.

Furthermore, the Respondent is not in any way related to the Complainant, nor was the Respondent authorized by the Complainant to use the mark/name “李嘉诚基金会”.

The Complainant contends that the Respondent does not have rights to or a legitimate interest 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 Names and has defaulted.

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

Bad Faith

It could not be a coincidence for the Respondent to register a domain name which is exactly identical to the Complainant's service mark/trade name “李嘉诚基金会”, and which incorporates the distinctive and well-recognised name of Complainant's founder and namesake, Mr. Li Ka Shing, taking into account that the Respondent has never had any rights or legitimate interests in the said mark/name.

Prior to the date of the Complaint, the Respondent had not used the Disputed Domain Name. This Panel finds that such passive holding of the Disputed Domain Name amounted to bad faith use and that the intention of the Respondent is clearly to ride on the reputation of the Complainant and to create confusion that the Respondent's acts were authorized by Complainant or that the Respondent is connected or affiliated with the Complainant or its famous founder, Mr. Li Ka Shing, or both, or that the Disputed Domain Name is sponsored by or affiliated with the Complainant.

Finally, it appears from the evidence that apart from the Disputed Domain Name, the Respondent has also registered the domain name “李嘉诚基金会.cn”. It is evident that the Respondent has a pattern of registering domain names that are identical to the service mark/trade name of the Complainant.

In conclusion, the Panel finds that the Respondent has registered and used the domain Names in bad faith and that the Respondent's bad faith has been convincingly established.

Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4 (a) (iii) of the Policy.

Status

www.李嘉诚基金会.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 <李嘉诚基金会.com> domain name should be TRANSFERRED from the Respondent to the Complainant.

Mr. David KREIDER
Sole Panelist

Dated: 16 February 2009