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ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

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Version
 Decision ID DE-0800167
 Case ID HK-0800188
 Disputed Domain Name www.長江實業.com
 Case Administrator Dennis CAI
 Submitted By David Kreider
 Participated Panelist

Date of Decision 04-11-2008

Language Version : English

The Parties Information

Claimant Cheung Kong (Holdings) Limited
Respondent Michel Ribeiro

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). Based on a Whois Record search conducted on 29 July 2008, the Complaint had identified the Registrant as Simon S.Y. Chiou, whose address is 200 Garfield Avenue, Alhambra, California, USA 91801; whose fax and phone number is +1 886933400989; and email address is 999@9333.com. 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. Except as otherwise specified, 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, NAME.COM LLC, a request for registrar verification in connection with the Disputed Domain Name. On 3 September 2008, the Registrar transmitted by email to the ADNDRC its verification response, identifying Michel Ribeiro, whose address is 63, Place Porte-de-Champerret, Paris 75017, as the registered holder of the subject domain, and not the Respondent identified in the Complainant's original Complaint. Accordingly, on 3 September 2008, the ADNDRC sent an email to the Complainant requesting that it re-submit its complaint to reflect this new information. On 10 September 2008, the Complainant submitted a new Complaint on Form C, identifying the Registrant as Michel Ribeiro, whose address is 63, Place Porte-de-Champerret, Paris 75017.

On 25 September 2008, the ADNDRC transmitted the Complaint to the Respondent and notified the Respondent of the commencement of the action, by email directed to qerqer@gmail.com. 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 to the Complainant by email, with a copy addressed to Respondent at qerqer@gmail.com.

The following day, 24 October 2008, a reply email was received from qerqer@gmail.com, written in the Chinese language. The email recited:

您好,

几个月前就告知ckh.com.hk, 長江實業.com 要免费赠送给ckh.com.hk長江實業(集團)有限公司, 因此不要继续浪费资源去仲裁了, 注册人同意将<長江實業.com>免费赠送给ckh.com.hk長江實業(集團)有限公司,

请直接办理转让，

谢谢！

注册人qerqer@gmail.com

The Panel translates the Respondent' s 24 October 2008 email into the English language thusly:

Hello,

Several months ago, I notified ckh.com.hk, that 長江實業.com would be given to ckh.com.hk [Cheung Kong (Holdings) Limited] free of charge. It is therefore unnecessary to continue to waste resources with arbitration. The registrant agrees that <長江實業.com> be given to ckh.com.hk [Cheung Kong (Holdings) Limited] free of charge.

Please process the transfer directly.

Thank you!

Registrant qerqer@gmail.com

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 31 October 2008, the Panel received the file from the ADNDRC and should render the Decision within 14 days, i.e., on or before 17 November 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 (Holdings) Limited, a corporation registered in Hong Kong. The Complainant is the owner of several trademarks including “長江實業 (集團)有限公司”，“長江實業”，and “長江”.

For Respondent

The Respondent, Michel Ribeiro, is the current registrant of the Disputed Domain Name (長江實業.com) according to the Whois information. The registered address of the Respondent is 63, Place Porte-de-Champerret, Paris 75017; the telephone number is 33.33933400977; and the email address is qerqer@gmail.com.

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, Cheung Kong (Holdings) Limited (“長江實業(集團)有限公司”), formerly known as Cheung Kong Real Estate Company Limited / Cheung Kong Real Estate & Investment Company Limited (“長江地產有限公司”), is the flagship of the Cheung Kong Group, the leading Hong Kong based multinational conglomerate.

(b) The Complainant was established on 8 June 1971 by Li Ka Shing, the tycoon who ranks 11th on Forbes Billionaires List 2008 and since August 1972, the Complainant has been trading and providing services under the service mark/trade name “長江實業”. The Complainant is listed on the Hong Kong Stock Exchange and in Hong Kong alone, members of the Cheung Kong Group include the Complainant (stock code: 0001), Hutchison Whampoa Limited (stock code: 0013), Cheung Kong Infrastructure Holdings Limited (stock code: 1038) and Hongkong Electric Holdings Limited (stock code: 0006), which are all constituent stocks of the Hang Seng Index; 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 Cheung Kong Group is based in Hong Kong, its businesses include property development and investment, ports and related services, telecommunications, hotels, retail, energy, infrastructure, finance, e-commerce, building materials, multimedia and life science.

(c) The Complainant is mainly a property development and strategic investment company and it is one of the largest developers in Hong Kong of residential, commercial and industrial properties. About one in seven private residences in Hong Kong were developed by the Complainant. The Complainant has developed a great many real estate projects in Hong Kong, both residential and industrial, some examples of which are listed below: -

Real Estate Projects developed by the Complainant:

Year 1990: Wang Lung Industrial Building
 Year 1994: Goldwin Heights
 Year 1994: Kwai Cheung Centre
 Year 1995: New Treasure Centre
 Year 1995: Kingswood Villas
 Year 1999: Tierra Verde
 Year 2000: Monte Vista

(d) The Complainant's real estate developments and services have been accorded the following awards: -

- 1998-99 REVIEW 200: Asia's Leading Companies Award - ranked No.3 of “Top 10 Hong Kong Companies doing Business in Asia” by Far Eastern Economic Review

(Organizer invited subscribers to choose the leading companies from 525 Asia and International companies.)

- 1999 World Most Recommended Real Estate Development Company by PricewaterhouseCoopers

(Organizer conducted survey on 754 CEO from state-owned enterprise, large-scale incorporations, self-owned companies and listed companies of 715 countries to elect the world most recommended enterprises in different sectors.)

- 2000-2001 Review 200: Asia's Leading Companies Award - ranked No.2 in the category of “Company Leaders” among the top 10 Hong Kong Enterprises by Far Eastern Economic Review

(Survey conducted by the organizer in the Asian Region)

(e) The Complainant has also invested in major real estate development projects in China, and among others, is the largest shareholder of the project “Oriental Plaza”, the most prestigious project in the middle of downtown Beijing with project value of HKD7,000 million and covering a total gross floor area of 920,000 meter square. In addition, the Complainant has in 1994 purchased “Lido Place” in Beijing, a commercial/residential complex that accommodates a large number of Beijing's expatriate community and multinational companies.

(f) In recognition of its businesses in China, the Claimant has been accorded the following awards: -

- 1998 Asia's Best Managed Companies Award (Mainland & Hong Kong) by Asiamoney

(Organizer invited 250 fund managers from 150 institutional investors worldwide to nominate the best managed companies.)

- 2001 China Best Quality Services and Brands: the Best Real Estate Developer by Capital

(Organizer aimed to praise companies which were rapidly expanding the China market and which have contributed a lot to mainland economy.)

(g) “長江實業” is the major part of the Complainant's name “長江實業(集團)有限公司”. Besides the Complainant, there are a number of subsidiary and associated companies of the Complainant which names also consist of “長江實業”, including but not limited to the following: -

- 長江實業地產投資有限公司 (16/07/1997)
- 長江實業地產代理有限公司 (23/07/1997)
- 長江實業(電力)有限公司 (14/12/1993)
- 長江實業(能源)有限公司 (14/12/1993)
- 長江實業財務有限公司 (09/02/1973)
- 長江實業(中國)有限公司 (13/04/1993)
- 長江實業(基本建設)有限公司 (12/10/1993)
- 長江實業(動力)有限公司 (14/12/1993)
- 長江實業地產發展有限公司 (11/11/1980)

(h) Based on the above, the service marks/trade names “長江實業” and “長江” have been well-recognized by the public and trade to be distinctive of and identified with the Complainant and its group of companies, but none other. Substantial goodwill and reputation has subsisted in the service marks/trade names “長江實業” and “長江”. One can also find numerous publications

and reports on the Internet about the Complainant and its group of companies.

(i) The major part of the Disputed Domain Name “長江實業” is identical to the service marks/trade names of the Complainant and its group of companies.

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

(a) The Respondent is not related to the Complainant in any way, nor was the Respondent authorised by the Complainant to use the mark “長江實業”.

(b) On or before the registration date of the Disputed Domain Name i.e. 15 September 2006: -

(a) The Complainant and its group of companies have widely used “長江實業” and “長江” as service marks/trade names;

(b) Substantial goodwill and reputation subsisted in the service marks/trade names; and

(c) The said service marks have been identified by the public as the service marks/trade names of the Complainant and its group of companies, 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’s service marks/trade names “長江實業” and “長江” have been used in Hong Kong and China respectively for more than 30 and 10 years before the registration date of the Disputed Domain Name and have a very strong reputation in Hong Kong and China. Undoubtedly, the Complainant has prior rights in the service marks/trade names “長江實業” and “長江”. As such, it could not be a coincidence for the Respondent to register a domain name that is identical to the Complainant’s mark/name “長江實業”, 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 website is related to or authorized by the Complainant. It is clear that the Respondent had acted in bad faith when it made the application for the registration of the Disputed Domain Name in September 2006.

(b) The Disputed Domain Name was not put into active use by the Respondent and was merely linked to a webpage providing information search services. This indicates that 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:

- 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 trademark “長江實業”. As the suffix “.com” only indicates that the domain name is registered under this gTLD and is not distinctive, the Panel finds that the Disputed Domain Name <長江實業.com> is identical with the Complainant’s trademark “長江實業”. The major part of the Disputed Domain Name, “長江實業”, 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.

On 24 October 2008, after having been advised by the ADNDRC of the entry of a default against it, the Registrant sent an email to the ADNDRC confirming the Registrant's intention and wish that the Disputed Domain Name would be transferred to the Complainant, "directly and without charge", thereby expressly relinquishing to the Complainant any rights and legitimate interests that the Respondent had in and to 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's service marks/trade names "長江實業" and "長江" have been used in Hong Kong and China, respectively, for more than 30 and 10 years before the registration date of the Disputed Domain Name and have a very strong reputation in Hong Kong and China. Undoubtedly, the Complainant has prior rights in the service marks/trade names "長江實業" and "長江". As such, it could not have been a coincidence, and the Panel finds that it was not mere coincidence, that the Respondent registered a domain name that is identical to the Complainant's mark/name "長江實業", taking into account that the Respondent has never had any rights or legitimate interests in the said mark/name. The Panel finds that the Respondent registered the Disputed Domain Name in order to confuse the public that the Respondent's website is related to or authorized by the Complainant and that the Respondent acted in bad faith when it made the application for the registration of the Disputed Domain Name in September 2006.

The Disputed Domain Name was not put into active use by the Respondent and was merely linked to a webpage providing information search services. This indicates that registration of the Disputed Domain Name has to purpose other than to create confusion that such registration is endorsed by the Complainant.

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.長江實業.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 <長江實業.com> domain name should be TRANSFERRED from the Respondent to the Complainant.

David KREIDER
Sole Panelist

Dated: 4th November 2008

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