



# ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

— A charitable institution limited by guarantee registered in Hong Kong

(Hong Kong Office)

## ADMINISTRATIVE PANEL DECISION

**Case No. HK 0900270**

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**Complainant: 1<sup>st</sup> Complainant Li Ka Shing 2<sup>nd</sup> Complainant Li Ka Shing Foundation Limited**

**Respondent: Thomas Cheng**

**Domain Name: <李嘉诚.com>**

**Registrar: ZigZagnames.com LLC**

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### 1. Procedural History

On 15 October, 2009, 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 one panelist, 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 October, 2009, the ADNDRC Hong Kong Office sent to the Complainant , by e-mail, 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.

On 16 October, 2009, ADNDRC Hong Kong Office sent an e-mail to the Registrar, ZigZagnames.com LLC and asked for information of whether the Respondent “Moniker Privacy Services” is the Registrant or the holder of the disputed domain name

On 2 November, 2009, ADNDRC(Hong Kong Office) sent an e-mail to Wilkinson & Grist, the authorized Representative of the Complainant, and informed them that, according to the information from the Registrar, the Registrant for the captioned domain name is “Thomas Cheng” (see attached of the e-mail) and asked the Complainant to provide with a correct Complaint Form.

On 4 November, 2009, the Complainant submitted an amended Complaint to

**ADNDRC(Hong Kong Office). On 6 November, 2009, ADNDRC(Hong Kong Office) sent an e-mail with the amended Complaint to the Respondent, Thomas Cheng.**

**During this time, after consulted with Mr. GUO Shoukang, the ADNDRC(Hong Kong Office) notified the Parties that the panelist in this case has been determined. Mr. GUO agrees to be designated as the panelist with a statement of independence and impartiality.**

**ADNDRC notified the Respondent, Thomas Cheng(cc:Complainant), by e-mail, that the proceedings are commenced and the Respondent shall submit a Response to the Complainant on or before 26 November, 2009. However, no Response was submitted on or before that time limit.**

**Then, ADNDRC(Hong Kong Office) informed the panelist, on 2 December, 2009, that the decision shall be rendered by 15 December, 2009, if there is no exceptional circumstances.**

## **2. Factual Background**

### *For the Complainant*

*The Complainants in this case are Li Ka Shing(1<sup>st</sup> Complainant) and Li Ka Shing Foundation Limited(2<sup>nd</sup> Complainant). The Complainants are the owners of the trademark “李嘉诚基金会“. The authorized Representative in this case is Wilkinson & Grist in Hong Kong.*

### *For the Respondent*

*The Respondent in this case is Thomas Cheng. His address is 6<sup>th</sup> floor, Prince's Building, 10 Chater Road, Central, Hong Kong. The Respondent is the current registrant of the disputed domain name <李嘉诚.com>, according to the Whois information.*

## **3. Parties' Contentions**

### *The Complainant*

#### **The Complainants provide their contention as following:**

#### **The Disputed Domain Name is identical or confusingly similar to a trade mark or service mark to which the Complainants have rights**

- (a) The 1<sup>st</sup> Complainant, who was born in Chiu Chow, China in 1928, ranks 11<sup>th</sup> on Forbes Billionaires List 2008. The 1<sup>st</sup> Complainant is the Chairman of Cheung Kong (Holdings) Limited and Hutchison Whampoa Limited. Cheung Kong (Holdings) Limited is the flagship of the Cheung Kong Group which has business operations in 54

countries around the world and employs about 240,000 staff. In Hong Kong alone, the Group includes 9 listed companies with a combined market capitalization of approximately HK\$626 billion. Based in Hong Kong, the Cheung Kong Group's businesses encompass such diverse areas as property development and investment, real estate agency and estate management, hotels, telecommunications and e-commerce, finance and investments, retail, ports and related services, energy, infrastructure projects and materials, media, and biotechnology. The 1<sup>st</sup> Complainant is a strong believer in synergy - the power of combined efforts. This belief is reflected in his naming his company "Cheung Kong Holdings" after the Yangtze River, a great river that flows through China and aggregates countless streams and tributaries. The Times in the United Kingdom and Ernst & Young UK jointly named the 1<sup>st</sup> Complainant as the Entrepreneur of the Millennium at the turn of the 20<sup>th</sup> Century.

- (b) In recognition of the 1<sup>st</sup> Complainant's philanthropic efforts and his contributions to society, Mr. Li has received Honorary Doctorates from the University of Cambridge, the University of Calgary in Canada, Peking University, and the University of Hong Kong, among others. Mr. Li, a Justice of the Peace, has also received the Grand Officer of the Order Vasco Nunez de Balboa from Panama, The Commander in the Leopold Order from Belgium, Knight (Commander of the Order) of the British Empire, the Grand Bauhinia Medal of Hong Kong, and the Commandeur de la Légion d'Honneur from the French Government.

**(Exhibit 6** is information on the background of the 1<sup>st</sup> Complainant.)

- (c) The 1<sup>st</sup> Complainant 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, the 1<sup>st</sup> Complainant began to make strategic contributions to education and medical care projects in Hong Kong and China. On 6 August 1980, the 1<sup>st</sup> Complainant set up the 2<sup>nd</sup> Complainant, deliberately choosing a name incorporating the personal name of the 1<sup>st</sup> 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. (**Exhibit 7** is a copy of Certificate of Incorporation of the 2<sup>nd</sup> Complainant.) To date, the 2<sup>nd</sup> Complainant and other private charitable Foundations established by the 1<sup>st</sup> Complainant have supported numerous charitable activities with grants, sponsorships and commitments of more than HK\$10 billion. (**Exhibit 8** is background information on the 2<sup>nd</sup> Complainant).

The 1<sup>st</sup> and 2<sup>nd</sup> Complainants are hereinafter collectively referred to as "the Complainant".

- (d) 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
- donation to Guangdong Police College

**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

**(ii) 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

**(iii) 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

(**Exhibit 9** are further details of the abovementioned projects of the Complainant)

- (e) 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, Sweden, Spain, Panama and Bahamas.
- (f) Since as early as 1980, the Complainant has been using “李嘉誠基金會” extensively as a service mark/trade name for those activities mentioned in paragraph (d) above. The Complainant is the registered proprietor of, inter alia, the following service marks in Hong Kong and China:-

Hong Kong

Service Mark	Registration No.	Date of Registration	Class
李嘉誠基金會	300150533	4 April 2003	36
李嘉誠基金會	300150542	4 April 2003	41
李嘉誠基金會	300168039	4 April 2003	42, 43, 44
李嘉誠基金會 李嘉诚基金会	301064015	4 March 2008	<u>16, 24, 25, 36,</u> <u>41, 42, 43, 44</u>

China

Service Mark	Registration No.	Date of Registration	Class

李嘉誠基金會	1547916	28 March 2001	36
李嘉誠基金會	1511808	21 January 2001	41
李嘉誠基金會	1583975	7 June 2001	42

(**Exhibit 10** are copy Certificates of Registration of the above service marks)

- (g) The Complainant claims rights in the service mark/name “李嘉诚基金会” and the personal name “李嘉诚”. As a result of the extensive and long period of use of the service mark/name “李嘉诚基金会” and the personal name “李嘉诚” by the Complainant, 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 mark/trade name “李嘉诚基金会” as well as the personal name “李嘉诚”. 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” and the personal name “李嘉诚”. (**Exhibit 11** is a random collection of printouts of articles published on the Internet about the Complainant). As such, the Complainant undoubtedly has rights in the service mark/trade name “李嘉诚基金会” and the personal name “李嘉诚”.
- (h) Prior to the date of registration of the Disputed Domain Name (i.e. 13 August 2009), Cheung Kong (Holdings) Limited, of which the 1<sup>st</sup> Complainant is the chairman, has registered the domain names “李嘉誠基金會.cc” and “李嘉誠基金會.net” for and on behalf of the Complainant. (See **Exhibit 12** for particulars of these domain name registrations).
- (i) The major part of the Disputed Domain Name is identical to the service mark/trade name of the 2<sup>nd</sup> Complainant and the personal name of the 1<sup>st</sup> Complainant.

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

- (j) The Disputed Domain Name was the subject matter of a previous domain name complaint under Case No.HK-0800235. In that case, an order was made by the Asian Domain Name Dispute Resolution Centre ordering the transfer of the Disputed Domain Name to the 2<sup>nd</sup> Complainant. The respondent in that case was Lee . Jia . Cheng (Co-Run) Limited and the then registrar was eNom, Inc. of 15801 NE 24th St., Bellevue, WA 98008, USA. Upon being notified by the Asian Domain Name Dispute Resolution Centre that a domain name complaint concerning the Disputed Domain Name was filed against Lee . Jia . Cheng (Co-Run) Limited, the then registrar eNom, Inc. confirmed to the Asian Domain Name Dispute Resolution Centre on 22 January 2009 that the Disputed Domain Name had been placed under a “locked” status pursuant to the Uniform Domain Name Dispute Resolution Policy as to prevent any transfers or changes to the registration information during the proceedings. **Exhibit 13** is a copy email issued by Asian Domain Name Dispute Resolution Centre to Lee . Jia . Cheng (Co-Run) Limited and copied to the Complainant’s solicitors enclosing a copy of the

said email dated 22 January 2009 issued by eNom, Inc. The then registration period of the Disputed Domain Name expired on 26 May 2009.

- (k) Despite the confirmation of eNom, Inc. dated 22 January 2009, during the pendency of the dispute resolution proceedings relating to Case No.HK-0800235, eNom, Inc., in violation of the Uniform Dispute Resolution Policy, “unlocked” the Disputed Domain Name and released the Disputed Domain Name to the public domain after the renewal grace period for the Disputed Domain Name had expired. This contravenes paragraph 3.7.5.7 of the ICANN Expired Domain Deletion Policy, which provides that in the event that a domain which is the subject of the Uniform Dispute Resolution Policy dispute is deleted or expires during the course of the dispute, the complainant in the dispute will have the option to renew or restore the name under the same commercial terms as the registrant.
- (l) eNom, Inc. had caused and enabled the release of the Disputed Domain Name to the public domain to enable registration of the Disputed Domain Name by the Respondent. **Exhibit 14** is a copy email issued by Asian Domain Name Dispute Resolution Centre on 22 September 2009 notifying the rendering of a decision relating to Case No.HK-0800235 and requesting eNom, Inc. to implement the said decision. **Exhibit 15** is a copy email issued by eNom, Inc. on 23 September 2009 informing that it had already released the Disputed Domain Name to the public for registration and the new registration particulars of the Disputed Domain Name.
- (m) The Respondent was not authorized by the Complainant to use the mark/name “李嘉诚”.
- (n) On or before the registration date of the Disputed Domain Name, i.e. 13 August 2009:-
  - (i) The 1<sup>st</sup> Complainant has been using “李嘉诚” as his personal name for almost 80 years;
  - (ii) The 2<sup>nd</sup> Complainant was established with a name incorporating the service mark/name “李嘉诚基金会”;
  - (iii) The 2<sup>nd</sup> Complainant has already registered the service mark “李嘉诚基金会” in Hong Kong and China;
  - (iv) The 2<sup>nd</sup> Complainant has widely used “李嘉诚基金会” as its service mark/trade name and the 1<sup>st</sup> Complainant has widely used “李嘉诚” as his personal name;
  - (v) Substantial goodwill and reputation subsisted in the service mark/trade name “李嘉诚基金会” and the personal name “李嘉诚”;
  - (vi) 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 2<sup>nd</sup> Complainant belonging to the 1<sup>st</sup> Complainant, and “李嘉诚” has been identified as the personal name of the 1<sup>st</sup> Complainant;

- (vii) Cheung Kong (Holdings) Limited has registered the domain names “李嘉誠基金會.cc” and “李嘉誠基金會.net” for and on behalf of the Complainant.

Further:-

- (i) as the Disputed Domain Name, being the same subject matter in Case No.HK-0800235, was ordered to be transferred to the 2<sup>nd</sup> Complainant, the Respondent does not have any legitimate right, interests and title to the Disputed Domain Name; and
- (ii) the Complainant noted that the Disputed Domain Name has never been put into use by the Respondent (see **Exhibit 16**) and therefore, before the date of filing the Complaint, the Respondent was not using or had it made demonstrable preparation to use the Disputed Domain Name in connection with a bona fide offering of goods or services.

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**

- (o) The 1<sup>st</sup> Complainant has been using “李嘉诚” as his personal name for almost 80 years and the 2<sup>nd</sup> Complainant has been established in Hong Kong for more than 20 years before the date of registration of the Disputed Domain Name and has been using the service mark/trade name “李嘉诚基金会” ever since. Substantial reputation and goodwill has already been subsisted in the Complainant’s service mark/trade name “李嘉诚基金会” and the personal name “李嘉诚”. Undoubtedly, the Complainant has prior rights in the service mark/trade name “李嘉诚基金会” and the personal name “李嘉诚”. The Complainant noted that the Respondent is located in Hong Kong. As the Complainant is very famous in Hong Kong, undoubtedly, the Respondent should have heard of the Complainant. As such, it could not be a coincidence for the Respondent to register a domain name which is exactly identical to the major portion of the Complainant’s service mark/trade name “李嘉诚基金会” and the personal name “李嘉诚”, taking into account that the Respondent has never had any rights or legitimate interests in the said mark/name and the circumstances under which the Disputed Domain Name was released to the public domain for registration by the Respondent. 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 and is related to 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 August 2009.
- (p) Further, the Complainant noted that the Disputed Domain Name has never been put into use by the Respondent (please refer to Exhibit 16 above). Such passive holding of the Disputed Domain Name further demonstrates that the Disputed Domain Name is and has been used by the Respondent in bad faith.
- (q) This indicates that the registration and use of the Disputed Domain Name has no purpose other than to deprive the Complainant of its rights to the Disputed Domain

Name which has already been ordered to be transferred to the Complainant in Case No.HK-0800235 and to create confusion that such registration and use is endorsed by the Complainant and thereby attracting Internet users to visit the Respondent's website thinking that it is related to the Complainant and/or the act of the Respondent is endorsed by the Complainant.

### *The Respondent*

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

#### **. Finding**

**According to Article 4(a) of the ICANN's "Policy", the Complainant must approve that three elements, mentioned below, have to be presented for support of the Complaint:**

- (1) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and**
- (2) the Respondent has no rights or legitimate interests in respect of the domain name; and**
- (3) the domain name has been registered and is being used in bad faith.**

##### **(1)Identical or Confusing Similarity**

As mentioned above, the first element is that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

Based on the existing documents(see Exhibit 10 of the Complaint), the Complainants have registered a series of trademark and service mark <李嘉诚基金会..com> at the Trademark Offices of the People's Republic of China as well as of other countries and regions. Such as, Trademark Certificates No. 1547916(class 36), No. 1511808(class 41) and No. 1583975(class 42)from the Trademark Office of the People's Republic of China, as well as Trademark No. 300150533(class 36), No. 300168039(class 42) and No. 301064015(class 16, class 24, class 25, class 36, class 41, class 42 ,class 43 and class 44) from the Trade Marks Registry, Intellectual Property Department of the Government of the Hong Kong Special Administrative Region.

The main part of the disputed Domain Name <李嘉诚>is identical with the main part of the trademark or service mark of the Complainants <李嘉诚>. Therefore, the Panel holds that the Complaint satisfied the requirement provided by Article 4(a)(1) of the "Policy".

##### **(2)Rights or Legitimate Interests of the Respondent**

Article 4(a) of the "Policy" provides that the second element has to be presented by the Complainant is that the Respondent has no rights or legitimate interests in respect of the disputed Domain Name.

According to the existing information, the Complainants have never authorized or licensed the Respondent to use <李嘉诚>by any means. Besides, the Respondent did not respond the Complaint up to now. Therefore, the Panel holds that the Respondent has no rights or legitimate interests in respect of the disputed Domain Name. The second requirement, mentioned in Article 4(a)(2) of the "Policy", was satisfied by the Complainants.

### (3)Bad Faith

According to Article 4(a)(3) of the “Policy”, the Complainant must prove that the disputed Domain Name has been registered and is being used in bad faith.

Under Article 4(b) of the “Policy”, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

- (a) circumstances indicating that the Respondent has registered or 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 the documented out-of-pocket costs directly related to the domain name; or
- (b) the domain name was registered in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Complainant has engaged in a pattern of such conduct; or
- (c) the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (d) by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent’s 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 the Respondent’s web site or location or of a product or service on the Respondent’s site or location.

Mr. 李嘉诚, the 1<sup>st</sup> Complainant, ranks 11<sup>th</sup> on Forbes Billionaires List 2008. He is the Chairman of Cheung Kong(Holdings) Limited and Hutchison Whampoa Limited. Cheung Kong(Holdings) Limited is the flagship of the Cheung Kong Group which has business operations in 54 countries around the world and employs about 240,000 staff. The Times in the United Kingdom and Ernst & Young UK jointly names the 1<sup>st</sup> Complainant as the Entrepreneur of the Millennium at the turn of the 20<sup>th</sup> Century.

On 6 August, 1980, the 1<sup>st</sup> Complainant set up the 2<sup>nd</sup> Complainant, deliberately choosing a name incorporating the personal name of the 1<sup>st</sup> Complainant, with a mission to enhance the impact of his philanthropy. To date, the 2<sup>nd</sup> Complainant(李嘉诚基金会) and other private charitable Foundations established by the 1<sup>st</sup> Complainant have supported numerous charitable activities with grants, sponsorships and commitments of more than HK\$ 10 billion(Exhibit 8 of the Complaint). Major donation projects undertaken by the 2<sup>nd</sup> Complainant include, but are not limited to, education, medical, culture and community welfare(Exhibit 9). Apart from Mainland China and Hong Kong, the 2<sup>nd</sup> Complainant also undertaken charitable projects in many Countries, including, but not limited to, U.S.A., Canada, Singapore, United Kingdom, Australia, the Netherland, France, Malaysia, Sri Lanka, India, Indonesia, Thailand, Pakistan, Sweden, Panama and Bahamas.

Since 1980, the 2<sup>nd</sup> Complainant has been using “李嘉诚基金会”extensively as a service mark/trade mark for those philanthropic activities, which were already mentioned above.

As a result of the extensive and long period of use of the 2<sup>nd</sup> Complainant, such marks have been well-recognized by the public to be distinctive of and identical with the 2<sup>nd</sup> Complainant but none other

The Complaint indicates that the Respondent is located in Hong Kong. As the Complainant has a high reputation and well-known to the public, so undoubtedly, the Respondent should have heard of the Complainant(李嘉诚).So, it could not be a coincidence for the Respondent to register a domain name which is exactly identical to the major part of the Complainant’s service mark/trade mark. In addition, the Disputed Domain Name has never been put into use by the Respondent(Exhibit 16). All those mentioned above indicate that the registration of the Disputed Domain Name has no purpose other than to deprive the Complainant’s rights to register the Disputed Domain Name and to create confusion in order to attract users to visit the Respondent’s website. It is evident that the Respondent registered the Disputed Domain Name in bad faith. Therefore, the Panel holds the Complaint satisfied the requirement provided in Article 4(a)(3).

In summing up, the Complaint has satisfied all the three requirements provided in Article 4(a) of the “Policy”.

## **5. Decision**

Based on the above mentioned analyses, the Panel holds that the three elements(requirements), provided in Article 4(a) of the “Policy”, have been presented(satisfied) and decides: the disputed Domain Name <李嘉诚.com> be transferred to the Complainants.

GUO SHOUKANG

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(Name in Print)

Dated: 14 December, 2009