



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

— A charitable institution limited by guarantee registered in Hong Kong

Asian Domain Name Dispute Resolution Center Hong Kong Office Administrative Panel Decision Case No. HKcc-0800006

Complainant : Cheung Kong (Holdings) Limited

Respondent : Liren Mei

Domain Name : 长江实业.cc

Registrar : Web Commerce Communications Limited DBA

1、 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 the receipt of the complaint. All correspondence to and from the ADNDRC described herein was in the English language.

On 15 August 2008, the ADNDRC transmitted by email to the Registrar 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 9 October 2008, the ADNDRC transmitted the Complaint to the Respondent and notified the Respondent of the commencement of the action and requested the Respondent to submit a Response within 20 calendar days. The Respondent failed to submit a Response within the specified period of time. The ADNDRC notified the Respondent's default on 31 October 2008. The Complainant further submitted its Supplemental Complaint to the ADNDRC on 17 December 2008. The ADNDRC confirmed the receipt of the Supplemental Complaint and transmitted to the Respondent on 18 December 2008.

Since the Respondent 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 Dr ZHAO Yun 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 17 March 2009, the Panel received the file from the ADNDRC and should render the Decision within 14 days.

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.

Concerning the admissibility of Supplemental Complaint on 17 December 2008, the Panel noted that the Supplemental Complaint was submitted after the ADNDRC's notice on the Respondent's default. However, the ADNDRC has been able to transmit the Supplemental Complaint to the Respondent on the second day; there was no objection from the Respondent. Furthermore, the submission as such has caused no *de facto* delay in the proceedings. Accordingly, this Panel decides to admit the Supplemental Complaint.

2、 Factual Background

For the Complainant

The Complainant in this case is Cheung Kong (Holdings) Limited, a corporation registered in Hong Kong. The registered address is 7th Floor, Cheung Kong Center, 2 Queen's Road Central, Hong Kong.

For the Respondent

The Respondent in this case is Liren Mei. The address is A3, Maanshan Industry Zone, Shajing Twon, Baoan, Shenzhen, China. The Respondent registered the disputed domain name <长江实业.cc> on 17 March 2006.

3、 Parties' Contentions

Complainant

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

The Complainant, Cheung Kong (Holdings) Limited (“长江实业(集团)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.

The Complainant was established on 8 June 1971 by Li Ka Shing, the tycoon who ranks 11th on Forbes Billionaires List 2008. 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. 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.

In China, the Complainant has also invested in a lot of important real estate development projects including being 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. Pursuant to the expanding development of the Complainant's businesses in China, the Complainant has obtained a lot of awards in Hong Kong and China.

“长江实业”is the major part of the Complainant's name. Besides the Complainant, there are a lot of subsidiary and associated companies of the Complainant which names also consist of “长江实业”. Based on the above, the service marks “长江实业” and “长江” 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 “长江实业” and “长江”. One can also find countless publications and reports on the internet about the Complainant and its group of companies. As such, the Complainant undoubtedly has rights in both service marks. The major part of the Disputed Domain Name is identical

to the service marks of the Complainant and its group of companies.

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

The Respondent is not related to the Complainant in any way, nor was the Respondent authorized by the Complainant to use the mark “长江实业”. On or before the registration date of the Disputed Domain Name, the Complainant and its group of companies have widely used “长江实业” and/or “长江” as service marks; substantial goodwill and reputation subsisted in the service marks; and the said service marks have been identified by the public as the service marks of the Complainant and its group of companies and none other. The name of the Respondent is not “长江实业” and the Respondent is not commonly known as “长江实业” which is the major portion of the Disputed Domain Name. Prior to the date of filing the Complaint, the Disputed Domain Name was not put into use. The Respondent did not use the Disputed Domain Name nor had the Respondent made demonstrable preparations to use the Disputed Domain Name in connection with a bona fide offering of goods or services. As the Respondent is not related to the Complainant in any way and the Complainant has never been authorized by the Respondent to use the mark/name “长江实业”. As such, the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

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

The Complainant's service marks “长江实业” and/or “长江” 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 all marks. As such, it could not be a coincidence for the Respondent to register a domain name which is identical to the Complainant's mark “长江实业” taking into account that the Respondent has never had any rights or legitimate interests in the said mark. 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 2006.

Further, since the registration of the Disputed Domain Name, the Respondent has not put the same into use. 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. Further, the Complainant noted that the Respondent has also registered the domain name “长江.com”. Bad faith of the Respondent is obvious.

Prior to the date of the Complaint, the Respondent had not used the Disputed Domain Name. Such passive holding of the Disputed Domain Name amounted to bad faith use. The intention of the Respondent is clearly to ride on the

reputation of the Complainant and to create confusion that the Respondent's act is authorized by the Complainant or that the Respondent is connected with the Complainant or the Disputed Domain Name is sponsored or affiliated with the Complainant.

In accordance with Paragraph 4(b)(i) of the Policy, the Complainant requests the Panel to issue a decision to transfer the Disputed Domain Name to the Complainant.

Respondent

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

4、 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:

- 1) the domain name registered by the Respondent 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.

Identical/Confusingly Similar

The Complainant, established in 1971, is one of the largest property developers in Hong Kong. The evidence submitted by the Complainant sufficiently shows that the Complainant is a leading Hong Kong based company commonly known as "长江实业". Through more than 30 years of continuous use of the service mark, the Complainant has been closely associated with "长江实业". The public has also associated "长江实业" with only the Complainant and no other. Further, the Complainant has, through extensive use and promotion of "长江实业" in the business, achieved common law rights in the service mark "长江实业". The Panel finds that the Complainant enjoys the indisputable prior rights and interests in the service mark/trade name "长江实业".

As the suffix ".cc" 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 <长江实业.cc> is identical with the Complainant's service mark “长江实业”.

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 fails to submit a Response, neither does it put forward any evidence to show any positive interests that it relies on. No evidence shows that the Respondent has acquired any trademark rights or other proprietary interests relevant to support its claim to the dispute domain name. The registration of a certain domain name does not of itself confer upon the registrant rights or legitimate interests in the domain name or in the subject matter of the domain name.

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

Bad Faith

Under Paragraph 4 (b) of the Policy, the following are relevant examples a Panel may take as evidence of registration and use in bad faith:

- (i) Circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or
- (ii) You have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) You have registered the domain name primarily for the purpose disrupting the business of a competitor; or
- (iv) By using the domain name, you have intentionally attempted to attract, for commercial gain, internet users to your website 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 your website or location or of a product or service on your website or location.

The Complainant has been continuously using the service mark “长江实业” for more than 30 years. As stated above, the evidence has sufficiently shown that

the Complainant is a leading company in Hong Kong and has closely associated with the service mark “长江实业”. “长江实业” is not a name commonly used in trade. Through years of use and promotion, the Complainant’s service mark “长江实业” has achieved a strong reputation. As such, the public has come to recognize and associate the Complainant’s service mark “长江实业” as originating from the Complainant and no other. The above facts entitle the Panel to infer that the Respondent should be aware of the existence of the Complainant and its service mark “长江实业”. The action of registering the disputed domain name *per se* has constituted bad faith. Further, the passive holding of the disputed domain name has in all the circumstances been able to serve as evidence to show the Respondent’s bad faith.

The Panel concludes 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.

5、 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 <长江实业.cc> domain name should be TRANSFERRED from the Respondent to the Complainant.

ZHAO Yun
Sole Panelist

DATED: 17 March 2009