



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

— A charitable institution limited by guarantee registered in Hong Kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HKcc-0900012
Complainant:	Tai Ping Limited
Respondent:	Zhang Xiaolei

PARTIES

Complainant is **Tai Ping Limited** (“Complainant”) incorporated in Tortola, British Virgin Islands, and of New York, U.S.A., represented by Joseph Simone and Bo Yu, of Baker & McKenzie, Hong Kong, SAR.

Respondent is **Zhang Xiaolei** (“Respondent”), of Guangdong, China.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**taipingcarpet.cc**> (“the domain name at issue”), registered with Web Commerce Communications Limited dba WebNic.cc (“the Registrar”).

PANEL

The undersigned certifies that he has acted independently and impartially and to the best of his knowledge has no known conflict in serving as Panelist in this proceeding.

Rodney C. Kyle as Panelist.

PROCEDURAL HISTORY

The Asian Domain Name Dispute Resolution Centre (“the ADNDRC(HK)”) has informed the Panel that Complainant submitted a complaint to the ADNDRC(HK) electronically on 14 October 2009 and that the ADNDRC(HK) received a corresponding hardcopy of that complaint on 14 October 2009 (collectively “the Complaint”).

On 19 October 2009, the Registrar confirmed by e-mail to the ADNDRC(HK) that the domain name at issue is registered with the Registrar and that Respondent is the current registrant of the domain name at issue. Also, by that same email, the Registrar verified that Respondent is bound by the Registrar’s registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN’s Uniform Domain Name Dispute Resolution Policy (the “Policy”), and that the registration agreement is in English.

The ADNDRC(HK) has informed the Panel that on 19 October 2009 the ADNDRC(HK) served the hardcopy of the Complaint on Respondent via courier in accordance with the Whois information provided by the Registrar, with delivery to Respondent occurring on 21 October 2009, and that on 22 October 2009 the ADNDRC(HK) forwarded the electronic copy of the Complaint to Respondent at the email address of the registrant, and at the email address of the technical and administrative and billing contacts of the registrant, shown in the Whois information.

On 22 October 2009, a Notification of Complaint and Commencement of Administrative Proceeding, setting a deadline of 11 November 2009 by which Respondent could file a Response to the Complaint, was transmitted to Respondent via e-mail to the email address of the registrant, and at the email address of the technical and administrative and billing contacts of the registrant, shown in the Whois information.

Respondent apparently did not submit a Response to the ADNDRC(HK).

On 27 November 2009, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the Forum appointed Rodney C. Kyle as Panelist.

On 8 December 2009, the ADNDRC(HK) informed the Panel that Complainant had served the hardcopy of the Complaint on Respondent on 8 December 2009.

On 10 December 2009, the hard copy of the Complaint was received from the ADNDRC(HK) by the Panel.

RELIEF SOUGHT

Complainant requests that the domain name at issue be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant

In view of the findings and discussion set out below, it is unnecessary to otherwise set out Complainant's contentions.

B. Respondent

Respondent has not made any contentions.

FINDINGS

The Complaint lacks a required statement of mutual jurisdiction; the ADNDRC(HK) did not require the Complaint to be amended by Complainant to include that required statement before the proceeding was found by the ADNDRC(HK) to have been commenced; nonetheless, the ADNDRC(HK) forwarded the file to the Panel; the proceeding is therefore not, and cannot by the Panel's actions become, a proceeding commenced in accordance with the Policy and with the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"); and so the proceeding is not a mandatory administrative proceeding to which Respondent was required to submit.

DISCUSSION

Eight points or sets of points give rise to the above-stated findings.

First, Rules ¶ 15(a) instructs the Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Second, the Policy is basically directed from a domain name registrant to a domain name registrant and prospective mandatory administrative proceeding respondent. More particularly, Policy ¶ 4(first sentence) includes that Policy ¶ 4 “sets forth the type of disputes for which you are required to submit to a mandatory administrative proceeding”. Still more particularly, Policy ¶ 4(a) provides that “You are required to submit to a mandatory administrative proceeding in the event that a third party (a ‘complainant’) asserts to the applicable Provider [such as the ADNDRC(HK)], in compliance with the Rules”, three points, the details of which three points are not pertinent in this instance. Similarly, Rules ¶ 3(a) provide that “Any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules to” a dispute-resolution service provider approved by ICANN, such as the ADNDRC(HK). In contrast with initiating an administrative proceeding (as provided for by Rules ¶ 3(a)) or, more particularly, initiating a mandatory administrative proceeding to which a domain name registrant is required to submit (as provided for by Policy ¶ 4(a)), Policy ¶¶ 4(d)(first sentence) and 4(e) provide that merely selecting a Provider is effected by submitting a complaint to a Provider, whether or not the submitting of that complaint is in compliance with the Policy and the Rules: Policy ¶ 4(d)(first sentence) provides that “The complainant shall select the Provider from among those approved by ICANN by submitting the complaint to that Provider” whereas Policy ¶ 4(e) provides that the Rules “state the process for initiating and conducting a proceeding and for appointing the panel that will decide the dispute (the ‘Administrative Panel’).”

Third, the occurrence of the expression “Mutual Jurisdiction” in the Rules is defined by Rules ¶ 1 as follows:

Mutual Jurisdiction means a court jurisdiction at the location of either (a) the principal office of the Registrar (provided the domain-name holder has submitted in its Registration Agreement to that jurisdiction for court adjudication of disputes concerning or arising from the use of the domain name) or (b) the domain-name holder’s address as shown for the registration of the domain name in Registrar’s Whois database at the time the complaint is submitted to the Provider.

Fourth, Rules ¶ 3(b)(xiii) requires that a complaint “shall ... State that Complainant will submit, with respect to any challenges to a decision in the administrative proceeding canceling or transferring the domain name, to the jurisdiction of the courts in at least one specified Mutual Jurisdiction”. That provision is followed through with by Policy ¶ 4(k), and especially by the second and subsequent sentences of Policy ¶ 4(k). By the second and subsequent sentences of Policy ¶ 4(k), domain name registrants have legal interests regarding panel decisions such as panel decisions provided for by Policy ¶ 4(i). (Policy ¶

4(i) provides that “The remedies available to a complainant pursuant to any proceeding before an Administrative Panel shall be limited to requiring the cancellation of your domain name or the transfer of your domain name registration to the complainant.”)

Fifth, the ADNDRC(HK) Supplemental Rules (the “Supplemental Rules”) ¶ 1(3) provides that the Supplemental Rules “are supplemental to the Rules and the Policy and are adopted by” the ADNDRC(HK) to assess complaints regarding domain name disputes and administer proceedings in conformity with the Rules and where required supplement them”; and Supplemental Rules ¶¶1(6) and 5(2) together with the Rules ¶ 1 definition of “Complainant” provide that “[the party initiating a complaint concerning a domain-name registration] shall be required to send its Complaint to the [ADNDRC(HK)], using Form C”.

Sixth, neither that Form C nor the Complaint contains the statement required by Rules ¶ 3(b)(xiii). If the ADNDRC(HK) is of the view that by leaving a Rules ¶ 3(b)(xiii) mutual jurisdiction statement out of the ADNDRC(HK) complaint form, the ADNDRC(HK) does not have to review complaints as to compliance with Rules ¶ 3(b)(xiii), then the Panel respectfully disagrees. Instead, if the proceeding was to be a mandatory administrative proceeding to which Respondent was required to submit, then, as is elaborated on in the next paragraph hereof, Complainant had to include in the Complaint a statement of mutual jurisdiction in compliance with Rules ¶ 3(b)(xiii) and the ADNDRC(HK) had to examine the Complaint as to compliance with Rules ¶ 3(b)(xiii). The Supplemental Rules are to not be inconsistent with the Policy and the Rules; the expression “Supplemental Rules” in the Rules is defined by Rules ¶ 1 as follows: “**Supplemental Rules** means the rules adopted by the Provider administering a proceeding to supplement these Rules. Supplemental Rules shall not be inconsistent with the Policy or these Rules and shall cover such topics as fees, word and page limits and guidelines, the means for communicating with the Provider and the Panel, and the form of cover sheets.”

Seventh, Policy ¶ 4(d)(second sentence) provides that except for either of the parties to multiple disputes petitioning for consolidation of those multiple disputes (in which case the petition is to be to the first Administrative Panel appointed to hear a pending dispute between those parties), the proceeding is to be administered not by a panel appointed by that Provider but rather by the Provider selected by the above-mentioned Policy ¶ 4(d)(first sentence) complaint submission to that Provider: “The selected Provider will administer the proceeding, except in cases of consolidation as described in [Policy ¶ 4(f)]”. That provision is especially followed through with by various other provisions, such as Rules ¶ 15(a) which is quoted from in the first of these eight paragraphs of discussion, and is consistent with the rest of the Policy and with the Rules. For example, there are Policy ¶ 4(h) and Rules ¶¶ 1, 4(a), 4(b), and 10(a). (Rules ¶¶ 4(a) and 4(b) provide that

- (a) The Provider shall review the complaint for administrative compliance with the Policy and these Rules and, if in compliance, shall forward the complaint (together with the explanatory cover sheet prescribed by the Provider's Supplemental Rules) to the Respondent, in the manner prescribed by [Rules ¶

2(a)], within three (3) calendar days following receipt of the fees to be paid by the Complainant in accordance with [Rules ¶ 19].

- (b) If the Provider finds the complaint to be administratively deficient, it shall promptly notify the Complainant and the Respondent of the nature of the deficiencies identified. The Complainant shall have five (5) calendar days within which to correct any such deficiencies, after which the administrative proceeding will be deemed withdrawn without prejudice to submission of a different complaint by Complainant.

Policy ¶ 4(h) provides that “We do not, and will not, participate in the administration or conduct of any proceeding before an Administrative Panel. In addition, we will not be liable as a result of any decisions rendered by the Administrative Panel”; by Rules ¶ 1 the occurrences of the expression “Panel” in the Rules “means an administrative panel appointed by a Provider to decide a complaint concerning a domain-name registration”; and Rules ¶ 10(a) provides that “The Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules.”) Rules ¶¶ 4(a) and 4(b), Policy ¶ 4(h)(first sentence) and Rules ¶ 10(a) maintain that distinction between the administration of a proceeding (which is for a Provider such as the ADNDRC(HK) to do) and the conduct of a proceeding (which is for a panel to do), and Policy ¶ 4(h)(second sentence) and the Rules ¶ 1 definition of “Panel” show that the panel powers to conduct proceedings include powers to render decisions.

Eighth, those panel powers to render decisions include, but are not limited to, powers to render decisions that provide remedies. Although, as mentioned above, Policy ¶ 4(i) provides that “The remedies available to a complainant pursuant to any proceeding before an Administrative Panel shall be limited to requiring the cancellation of your domain name or the transfer of your domain name registration to the complainant”, panels have powers to render other decisions. Those powers include powers to dismiss a complainant’s complaint without prejudice to submission of a different complaint by that complainant.

DECISION

In accordance with the foregoing, the Complaint is dismissed without prejudice to submission of a different complaint by Complainant.



Rodney C. Kyle, Esq.
Arbitrator

Rodney C. Kyle, B.Sc., LL.B., C.Arb.; Panelist
Dated: 11 December 2009