



## ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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### Decision Submission

English Print

Decision ID	DE-0500040
Case ID	CN-0500042
Disputed Domain Name	www.95528.com
Case Administrator	jinxi
Submitted By	Nigel Li
Participated Panelist	Nigel Li
Date of Decision	14-06-2005

### The Parties Information

<b>Claimant</b>	Shanghai Pudong Development Bank Co., Ltd.
<b>Respondent</b>	He Yuhai

### Procedural History

The Complaint was filed with the Beijing Office of Asian Domain Name Dispute Resolution Centre (ADNDRC) on March 9, 2005, and after being reviewed for administrative compliance, served on Respondent on March 18, 2005. Respondent did not file a response on or before May 4, 2005. I was appointed Panelist pursuant to the Uniform Domain Name Dispute Resolution Policy ("UDRP") and Rules promulgated by the Internet Corporation for Domain Names and Numbers (ICANN). On May 23, 2005, after reviewing the complaint, I, as the Panelist, requested Complainant to submit further contention. Both Complainant and Respondent knew of the request. Complainant submitted the further contention on May 26, 2005, and Respondent represented that he had not received the e-mails regarding this case and applied for extending the deadline for submitting a response. Therefore, I agreed to allow Respondent to submit a response on or before 1 June 2005. Respondent submitted a response on June 1, 2005. Upon the written submitted record including (1) Complaint and its attachments; (2) Proceedings Minutes; (3) Letter of Confirmation of Receipt of Claims dated March 3 from Beijing Office of ADNDRC to Complainant; (4) Letter of Confirmation of Receipt of Claims dated March 16 from Beijing Office of ADNDRC to BIZCN.COM, INC. (the Registrar); (5) Letter of Registrar's Confirmation dated March 18, from BIZCN.COM, INC.; (6) Letter of Transmittal of Claims dated March 18, from Beijing Office of ADNDRC to Respondent; (7) Letter of Requirement of Change of Language dated March 21 from the Beijing Office of ADNDRC to Complainant; (8) Letter of Confirmation of Notifying the Claims has been Confirmed and Forwarded dated April 14 from the Beijing Office of ADNDRC to Complainant; (9) Letter of Notification of Commencement of the Case Proceedings dated April 14 from the Beijing Office of ADNDRC to Respondent and Registrar; (10) Letter of Notification of No Response Received and Hearing by Default dated May 9 from the Beijing Office of ADNDRC to Respondent; (11) Letter of Confirmation of the Appointment of the Sole Panelist dated May 9 from the Beijing Office of ADNDRC to Complainant and Respondent; (12) Letter of Transferring the Case to the Panelist; (13) Complainant's further contention dated May 25; (14) Letter of Requiring an Extension of Time for Submitting the response dated May 26 from Respondent to the Beijing Office of ADNDRC; (15) Letter of Allowing Requirement of Respondent dated May 30 from the Beijing Office of ADNDRC to complainant and Respondent; and (16) Respondent's Response dated June 1, I hereby decide this dispute as follows.

### Factual Background

#### For Claimant

Complainant Shanghai Pudong Development Bank Co., Ltd., a financial bank, is a joint-stock commercial bank approved by the People's Bank of China on August 28, 1992, and began operations on January 9, 1993. On September 16, 2003, the Ministry of Information Industry of the People's Republic of China approved and assigned 95528 to Complainant

as the national unified short number for customer service. Complainant registered <95528.com.cn> on September 28, 2003. 95528 is not only the short number for customer service of Complainant but also the logo of Complainant's "telephone banking" services.

### For Respondent

Respondent registered the domain name <95528.com> with BIZCN.COM INC. on June 3, 2004, which represents 95.5.28, the birth date of Shen Gaolong who is the son of Respondent's best friend Shen Xiangchun. The purpose of this website is to offer a personal communication platform for Shen Gaolong to make friends with those who were born on the same date as he was.

In the complaint, Complainant requested that Respondent transfer the domain name in dispute.

In the response, Respondent requested the panel to reject the complaint.

### Parties' Contentions

#### Claimant

In the complaint, Complainant asserted the following:

- (1) Complainant has rights in the service mark "95528", which identifies its business services. Complainant asserts that the "95528" mark is well known throughout the country.
- (2) The disputed domain name <95528.com> is the same as the 95528 marks, which is adequate to lead to confusion in the public.
- (3) Respondent has no rights or legitimate interests in the disputed domain name.
- (4) Respondent registered and used the disputed domain name in bad faith because Respondent has not yet actually used the domain name since the domain name in dispute was registered.
- (5) Complainant requests the Panel to direct the Registrar to transfer the disputed domain name to it.

In the further contention, Complainant claimed the following:

- (1) "95528" is a trademark or service mark in which Complainant has property rights from the perspective of registered trademark protection.
- (2) According to paragraph 4(a)(i) of the UDRP, the standard applied in domain name disputes to judge the appropriateness of trademark is "trademark or service mark in which the complainant has rights".
- (3) So long as there is conformity or confusing similarity between the domain name in dispute and the trademark or service mark in which Complainant has rights, the claim of Complainant may be submitted to ADNDRC for resolution pursuant to the UDRP.
- (4) The number "95528" in Complainant's claim is the short telephone number of Complainant's customer service, and the service mark of Complainant's "telephone banking" services, which is exclusive, special, well-known, and already satisfied the criteria for verification of well-known trademarks specified in the Regulations of Verification and Protection of Well-Known Trademarks promulgated by the State Administration of Industry and Commerce of China.
- (5) Both the Trademark Law of China and the broadly applied Paris Convention for the Protection of Industrial Property provide legal protection with regard to the well-known trademark that is not registered.

#### Respondent

In the response, Respondent asserted the following:

- (1) Complainant has no priority over the main part of the disputed domain name:

A. Complainant does not have a registered trademark or service mark.

Complainant has not provided any evidence that can prove he holds the trademark rights to the numerical order 95528. Complainant also positively expressed that he didn't hold the registered trademark rights.

B. Complainant does not hold the prioritized trade name.

Complainant has not provided any evidence that can prove he holds the trade name rights to the numerical order 95528.

C. Complainant does not hold a Name Peculiar to Goods or Services.

a. Complainant's use of "95528" as telephone numbers is only confined to several cities.

b. Complainant uses 95528 as telephone number in cities in China, not all over the world, so, not a well-known mark.

D. Telephone number resources belong to the Chinese government; Complainant does not enjoy the possessing right to 95528, the telephone number.

E. Complainant's registered domain name does not hold the priority granted by the UDRP

F. Judging by previous cases, Complainant's complaint should not deserve supports.

- (2) Respondent does hold the priority over the main part of the disputed domain name.

- A. Respondent registered the domain name 95528.com using Shen Gaolong's birth date 95.5.28 under the entitlement of Shen Xiangchun on June 3, 2004, and used it as Shen Gaolong's personal website.
- B. Until the occurrence of this case, Respondent has used the disputed domain name for non-commercial purposes.

(3) Respondent registered and uses the disputed domain name in good faith

Respondent thinks that Respondent has no bad faith as stipulated by the UDRP. The reasons are as follows:

- A. The purpose of this website is to offer a personal communication platform for Shen Gaolong to make friends with those who were born on the same day as he was.
- B. There is no evidence that can prove Respondent registered the domain name for selling, letting or transferring it to get extra benefits relevant to the domain name.
- C. Respondent has never prevented Complainant from reflecting his trademark through his domain name.
- D. Respondent didn't mislead the relevant Internet visitors or get extra profits because of the disputed domain name.

(5) Complainant's complaint is in bad faith; therefore, it is an abuse of the administrative proceeding.

Complainant has no right to demand Respondent to transfer the domain name to him; obviously, Complainant is maliciously abusing the administrative proceeding, and is attempting to deprive Respondent of the domain name.

## Findings

### Identical / Confusingly Similar

After comparing the domain name in dispute 95528.com with Complainant's service mark 95528, there is no doubt that 95528.com is identical or confusingly similar to Complainant's service mark 95528 and the domain name of its website 95528.com.cn.

Complainant asserted that 95528 is the national unified short number for customer service approved and assigned by the Ministry of Information Industry of the People's Republic of China to Complainant, and it is the logo of Complainant's "telephone banking" services and accepted the fact that it is not a registered trademark in China. However, the query does not stop here. Although "95528" is not a registered trademark or service mark in which Complainant has exclusive rights from the perspective of registered trademark protection, both the Trademark Law of China and the broadly applied Paris Convention for the Protection of Industrial Property provide special stipulations and legal protection with regard to a well-known trademark that is not registered.

It is well recognized that the requirement of "a trademark or service mark in which Complainant has right" specified in the UDRP Paragraph 4(a) (i) does not require that Complainant has to be the holder of a registered trademark or service mark. Reference is made to *Blue Cross and Blue Shield Association v. Domain Deluxe*, WIPO Case No. D2005-0209. It is also well recognized that a non-registered trademark, if it functions as a registered trademark as it is well known, is entitled to the protection afforded to a registered one; i.e., perform the function of a trademark and be well known. Reference is made to *Generalitatde Catalunya v. Hello Domain*, WIPO Case No. D2005-0010. Thus, a non-registered trademark that performs the function of a trademark and is well known is sufficient to meet the requirement of the UDRP Paragraph 4(a) (i).

The Ministry of Information Industry of the People's Republic of China approved and assigned 95528 to Complainant as the national unified short number for customer service on September 16, 2003. Complainant has also registered <95528.com.cn> on September 28, 2003. The number "95528" is not only the short number for customer service of Complainant, but also the logo of Complainant's "telephone banking" services, which is exclusive, special, well-known, and satisfies the criteria for verification of well-known trademarks specified in the Regulations of Verification and Protection of Well-Known Trademarks promulgated by the State Administration of Industry and Commerce of China. Although Respondent argued that Complainant uses 95528 as a telephone number in several cities in China, not all over the world, a well-known mark is not required to be known all over the world as long as the mark is well known in the pertinent market. I also take note that Respondent has not disputed the fact that Complainant's mark is a well-known one in the pertinent market. Therefore, Complainant has indeed used the number "95528" in the function of a registered trademark and it is in fact well known, so the requirement of UDRP Paragraph 4(a) (i) has been met.

The registered domain name is identical or confusingly similar to Complainant's mark, and I therefore conclude that the Complainant's mark deserves legal protection here as a well-known trademark does.

### Rights and Legitimate Interests

Complainant argues that Respondent has no rights or legitimate interests in the disputed domain name judging from the information learned from Complainant.

UDRP Paragraph 4(c) provides that a respondent's rights or legitimate interests in a domain name may be demonstrated, without limitation, by showing that (i) before notice to the respondent of the dispute, the respondent has used, or made demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or (ii) the respondent has been commonly known by the domain name; or (iii) the respondent is making legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Complainant submitted a notarial certificate issued by the Notary Public Office of Shanghai Pudong New Area dated October 27, 2004, as evidence to prove that Respondent has not actually used the domain name after registering it. On the other hand, Respondent presented the index page of 95528.com of the date May 31, 2005, to prove that the website is active.

Whether or not Respondent was notified of this dispute on March 18, 2005, the date of transmitting the claim to Respondent, or May 26, 2005, the date Respondent represented that he had not received the e-mails regarding this case and had applied to extend the deadline for him to submit a response, Respondent merely presented the index page of 95528.com of the date May 31, 2005, which is not sufficient to prove that before Respondent was notified of the dispute, either on March 18, 2005 or May 26, 2005, Respondent had used, or made demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services, or that Respondent had been making legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Therefore, the requirement of UDRP Paragraph 4(i) and (iii) are not met.

Moreover, Respondent submitted no evidence to prove that he has been commonly known by the domain name. Therefore, the requirement of UDRP Paragraph 4(ii) is not met either.

I therefore conclude that Respondent does not have any rights or legitimate interests with respect to the domain name at issue.

### **Bad Faith**

UDRP Paragraph 4(b) provides that indications of bad faith include, without limitation, (i) registration for the purposes of selling, renting or transferring the domain name to the complainant for value in excess of the respondent's cost; (ii) a pattern of registration in order to prevent the complainant from reflecting the mark in a corresponding domain name; (iii) registration for the primary purpose of disrupting the business of a competitor; or (iv) an intentional attempt to attract, for commercial gain, Internet users to the respondent's web site 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 respondents web site or location.

To decide whether Respondent registered and used the domain name in bad faith or not, whether Respondent has a legitimate cause in registering the domain name that happened to be a well-known trademark of a third party must be examined. I take note that Respondent registered the domain name in dispute on June 3, 2004, which is five days after Shen Gaolong's 10 years old birthday. In his defense, Respondent seems to suggest that he registered the domain name 95528 with the motive of giving a gift to Shen Gaolong. However, some motive is one thing, whether the motive is a legitimate cause is quite another. By registering the domain name of 95528.com, if it were a legitimate one, it would bring about the consequence of charging Complainant for transferring the ownership of 95528 domain name in the future. I visited the web site in dispute, 95528.com, on May 16, 2005, and noticed the web site was inactive, and I was automatically transferred to the web page of another web site irrelevant to Shen Gaolong. The domain name in dispute was not actually used until the complaint was lodged. If any gift is given, it is the potential claims that may be inflicted upon the Complainant. Moreover, I take note of the fact that the owner of the domain name in dispute is Respondent, not Shen Gaolong or Shen Xiangchun, which shows that Respondent prepared the gift for himself, not for Shen Gaolong. Therefore, it may be well referred that Respondent registered 95528 for the purpose of financial gain in excess of Respondent's cost. Thus, the "bad faith" requirement under UDRP Paragraph 4(b) (i) is met.

I therefore conclude that Respondent did register and use the domain name in bad faith.

In reaching the conclusion, I would further note that Respondent will always have the option of registering other domain names as a gift for Shen Gaolong such as 1995528.com, 28595.com, 280595.com, etc., other than 95528.com to achieve the same purpose of offering a personal communication platform for Shen Gaolong to make friends with those who were born on the same date as he was. My judgment today will not result in significant inconvenience to Respondent.

### **Status**

www.95528.com

Domain Name Transfer

**Decision**

In light of my findings above that (a) the registered domain name is identical or confusingly similar to Complainant's protected mark; (b) Respondent does not have rights or legitimate interests with respect to the domain name at issue; and (c) Respondent did register and use the domain name in bad faith, as the term is defined in the ICANN Policy, I find in favor of COMPLAINANT. Complainant's request to transfer the domain name 95528.com is hereby GRANTED. The domain name shall be transferred to Shanghai Pudong Development Bank Co., Ltd.

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